

local competition.²⁹⁷ Competing carriers must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service for their customers, to maintain and repair network facilities, and to bill customers. The Commission has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.²⁹⁸ For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that permits competing carriers to perform these functions in "substantially the same time and manner" as the BOC.²⁹⁹ For OSS functions that have no retail analogue, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete."³⁰⁰

105. We analyze whether SWBT has met the nondiscrimination standard for each OSS function using the two-step approach outlined in prior orders. Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.³⁰¹ Under the second inquiry, we examine performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future volumes.³⁰² The most probative evidence that OSS functions are operationally ready is actual commercial usage in the state for which the BOC seeks 271 authorization. Absent sufficient and reliable data on commercial usage in that state, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS. Finally, where, as here, the BOC proves that many of the OSS functions in the state for which it seeks 271 authorization are the same as in a state for which we have already granted such authorization, we will also look to performance in the latter state as additional evidence with which to make our determination.

²⁹⁷ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653; *BellSouth South Carolina Order*, 13 FCC Rcd at 547-48, 585.

²⁹⁸ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83.

²⁹⁹ *Id.*, 15 FCC Rcd at 3991, para. 85.

³⁰⁰ *Id.* at 3991, para. 86.

³⁰¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 87; *Ameritech Michigan Order*, 12 FCC Rcd at 20616, para. 136 (we determine "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."). For example, a BOC must provide competing carriers the specifications necessary to design their systems interfaces and business rules necessary to format orders, and demonstrate that systems are scalable to handle current and projected demand. *Id.*

³⁰² We assess "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter." See *Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

b. Relevance of the *SWBT Texas Order*

106. For the reasons discussed more fully below, we conclude that SWBT has demonstrated that it provides nondiscriminatory access to its OSS. We find that the evidence presented in this record shows that, under the first inquiry of our OSS analysis described above, SWBT provides nondiscriminatory access to OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing. In reaching this conclusion, we rely on detailed evidence provided by SWBT in this proceeding and, in certain instances, on our findings from the *SWBT Texas Order*. Under our second inquiry, we find that SWBT's OSS in both Kansas and Oklahoma are operationally ready to handle current demand and reasonably foreseeable future volumes. We base this determination on SWBT's actual performance in Kansas and Oklahoma and, in certain instances, on its performance in Texas.

107. SWBT relies heavily in this application on its argument that findings from the *SWBT Texas Order*, and the performance of its OSS in Texas, are relevant in this proceeding because it has deployed a region-wide OSS. Specifically, SWBT asserts that it provides wholesale services to competing carriers in Kansas, Oklahoma and Texas through one OSS, using common interfaces, systems, procedures and, to a large extent, common personnel. To support its claim, SWBT submits an attestation letter and a supplemental report from a third party consultant, Ernst & Young.³⁰³ Ernst & Young reviewed five OSS interfaces that provide competing LECs access to pre-ordering and ordering functions, and two OSS systems that are central to the ordering process.³⁰⁴ Ernst & Young concluded, on the basis of interviews, observing test orders, and examining programming code, that the several OSS interfaces and systems it reviewed are the same throughout SWBT's five-state operating region (including Kansas, Oklahoma and Texas).³⁰⁵ In addition to the Ernst & Young report, which addresses only a portion of SWBT's OSS, SWBT also provides substantial additional evidence, in affidavits filed with its application and its reply comments, that the interfaces, systems and processes it has in place in Kansas and Oklahoma are the same as those used in Texas.³⁰⁶ We also recognize that

³⁰³ See SWBT Application, Appendix G, Tab 44 (Ernst & Young Report); see also Letter from Geoffrey M. Klineberg, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-217 (filed December 1, 2000), Attachment A ("Ernst & Young Supplemental Report"). The Department of Justice was unable to judge whether Ernst & Young conducted a review adequate to support its conclusion, finding that the attestation did not describe the specific methods, tests, and analyses upon which the conclusion was based. See Department of Justice Evaluation at 32, n.97. Ernst & Young's subsequently-filed Supplemental Report provides critical details about the scope and methodology of the review. Without this support, we could have placed little reliance on the reviewer's conclusions.

³⁰⁴ See Ernst & Young Supplemental Report at 3-4 (explaining that the following SWBT interfaces and systems were reviewed: EASE, LEX, EDI, DataGate, VeriGate, LASR, and SORD).

³⁰⁵ Specifically, Ernst & Young concluded that, in all five SWBT states, the interfaces and systems it reviewed: process the same transactions; use the same programming code; provide the same functionality; and have the same supporting documentation. Ernst & Young Supplemental Report at 4.

³⁰⁶ See SWBT Ham Aff. paras. 13-18; SWBT Ham Reply Aff. paras. 7, 8, 16, 19 and 29; SWBT Mah Reply Aff. paras. 5, 10, 11, 14, 20. See also SWBT Reply at 28.

both the Kansas and Oklahoma Commissions concluded that SWBT uses a common OSS in Kansas, Oklahoma and Texas.³⁰⁷

108. We conclude that SWBT, through the Ernst & Young report and other aspects of its application, provides reliable evidence that the OSS systems in Texas are relevant and should be considered in our evaluation of SWBT's OSS in Kansas and Oklahoma. This showing thus enables us to rely, in certain instances, on findings relating to SWBT's OSS from the *SWBT Texas Order* in our analysis of SWBT's OSS in Kansas and Oklahoma. In addition, where low volumes render SWBT's performance data in Kansas and Oklahoma inconsistent and inconclusive, we find that data reflecting SWBT's performance in Texas can provide a particularly valuable indication of the commercial readiness of SWBT's OSS.

109. Under our first inquiry (the analysis of OSS functionality), our earlier conclusions about SWBT's OSS in Texas are relevant in this proceeding to the extent that SWBT uses the same systems, offering the same functionality, in Kansas and Oklahoma. For example, if we find (as we do below) that the interfaces used for pre-ordering are the same in Kansas, Oklahoma and Texas, then we may consider our findings in the *SWBT Texas Order* that these interfaces provide the full range of necessary functionality. With respect to our second inquiry (the analysis of commercial readiness), evidence that its OSS is the same across these three states allows us to broaden the scope of our review and look to evidence of SWBT's performance in Texas. While our analysis always starts with SWBT's performance in Kansas and Oklahoma, we find that SWBT's performance in Texas is relevant to the extent that SWBT demonstrates that it uses common systems and processes in all three states.

110. We agree with the Department of Justice that, because this is the first opportunity for the Commission to evaluate an application relying on this form of proof, we should establish the kind of evidentiary showing that will be expected of applicants in the future. By explaining clearly what types of evidence we have found to be persuasive in this instance, we are establishing a roadmap that can be followed by applicants in the future that seek to rely in part, as SWBT has, on evidence presented in another application. Moreover, we address in detail the Department of Justice's concerns about shortcomings in the evidence provided by SWBT in its initial application, and describe the additional evidence submitted by SWBT in response. As explained below, we find that SWBT has provided additional evidence in its reply comments and *ex parte* filings directly responsive to the Department of Justice's concerns, and find that this information adequately addresses these concerns.³⁰⁸ A future applicant seeking, as SWBT does,

³⁰⁷ See SWBT Application, Appendix C-KS, Tab 259, at 18-19 (Kansas Commission Conclusion); SWBT Application, Appendix C-OK, Tab 275, at 172, 174 (Oklahoma Commission Conclusion).

³⁰⁸ We note that this additional evidence, provided by SWBT with its Reply Comments, is directly responsive to arguments raised by a party commenting on the application (here, the Department of Justice) and, consistent with the manner in which we have treated such responsive evidence in prior proceedings, may be considered without a waiver of our "freeze frame" rule. See *SWBT Texas Order*, 15 FCC Rcd at 18370, para. 35.

to establish the relevance of another state's OSS, should supply this type of evidence with its *initial application*.

111. The Department of Justice found the evidence provided by SWBT in its initial application to show that its OSS is the same in Texas, Kansas and Oklahoma, to be "ambiguous and incomplete" in two general respects. First, the Department of Justice found that SWBT had not been clear as to precisely what it means for OSS to be "the same" – that is, whether this means the shared use of a single OSS, or the use of systems that are identical, but separate.³⁰⁹ We find that SWBT has provided a sufficiently detailed description of its OSS, which distinguishes between these two concepts of sameness. In most respects, SWBT demonstrates that competing carriers in Kansas, Oklahoma and Texas share the use of a single OSS, not two or three separate OSS: a common set of processes, business rules, interfaces, systems and, in many instances, even personnel. Where SWBT has discernibly separate OSS, SWBT demonstrates that its OSS reasonably can be expected to behave the same way in all three states. As described below, for example, the use by SWBT of two different order processing systems (a SORD processor in Dallas for retail and wholesale orders in Texas, and a SORD processor in St. Louis for retail and wholesale orders in SWBT's other four in-region states) use the same programming code and, moreover, are designed to operate in an indistinguishable manner.

112. The Department of Justice further expressed concern that SWBT's application largely focused on certain mechanized aspects of its OSS, providing little evidence relating to the rest of the systems, processes and personnel that make up its OSS.³¹⁰ We agree that, unless an applicant seeks to establish only that certain discrete components of its OSS are the same, a general assertion of OSS sameness should be supported by evidence relating to *all* aspects of its OSS – including those OSS functions performed by BOC personnel.³¹¹ We also agree with the Department of Justice that SWBT's initial application, and its heavy reliance on the incomplete Ernst & Young report, did not provide a full picture of SWBT's Kansas, Oklahoma and Texas OSS. SWBT supplemented the record in this proceeding with a substantial amount of additional evidence, to support its assertions regarding its OSS. Specifically, in response to the Department of Justice's suggestions, SWBT provided additional information or clarification relating to its showing of sameness in four specific areas: functions performed by SWBT's personnel; the EDI ordering interface; the SORD processors in Dallas and St. Louis; and the scalability of its manual processing functions. While we address each of these four areas below, and encourage future

³⁰⁹ Department of Justice Evaluation at 29.

³¹⁰ *Id.* at 30.

³¹¹ As we have held previously, a BOC's OSS includes both mechanized systems and manual processes, and thus the OSS functions performed by BOC personnel have been part of our OSS functionality and commercial readiness reviews.

applicants to provide this type of evidence in their initial applications, we do not suggest that these four items establish an exact script for future applicants to follow.³¹²

113. Of the issues identified by the Department of Justice as requiring additional evidence in this proceeding, the most complicated relates to the manual, or personnel, components of SWBT's OSS. Specifically, the Department of Justice indicated that SWBT should be required to show that the personnel involved in actual provisioning and maintenance/repair of CLEC orders in Kansas and Oklahoma will do their jobs in the same manner as those in Texas, and identified a range of evidence necessary to make such a predictive judgment. In response to the Department of Justice's evaluation, SWBT provided additional information regarding the aspects of its OSS that involve manual work. Factors we found particularly relevant to our analysis include the following. First, SWBT provided additional information about the range of functions relating to different states that are performed by the same workforce out of common, five-state centers. For example, SWBT uses a common ordering center to perform manual work on orders for all five states, and uses the same pool of employees to perform certain provisioning, maintenance/repair and billing functions across all five states as well. SWBT also provided additional details supporting its assertion that its personnel would do their jobs in the same manner in all three states, for work that necessarily is performed at the state level rather than at these regional centers. Specifically, SWBT explained that common centers coordinate field work activities in all five states; field personnel access the same systems and use the same procedures in all five states; personnel receive common training across all five states; and there is a common organizational structure across all five states. In the end, we find that it is reasonable to conclude that the existence of these similarities will result in similar performance.

114. We also find that SWBT has provided additional evidence sufficient to answer the Department of Justice's concerns about carriers' ability to develop and use SWBT's EDI ordering interface in Kansas and Oklahoma. Evidence that the key interfaces used by competing carriers are the same certainly is necessary for any showing that a BOC provides common OSS in different states. SWBT explains, in affidavits submitted with its Reply Comments, that carriers may construct and use one EDI interface to submit orders in all five states, without any state-specific modifications.³¹³ SWBT also explains that precisely the same business rules for pre-ordering and ordering apply on a region-wide basis. Ernst & Young's report provides

³¹² Indeed, one issue not raised by the Department of Justice involves the OSS role played by SWBT's "back office" or "legacy" systems. These systems and databases are used in the processing of retail and wholesale orders, such as databases containing customer records and addresses, or those containing loop make-up information. SWBT notes that it is the only "Baby Bell" to survive intact as a regional BOC and, as such, has maintained a single region-wide set of OSS, including its back office systems, for its own retail use long before divestiture in 1984. See SWBT Ham Reply Aff. at para. 5.

³¹³ See SWBT Ham Reply Aff. at paras. 7-10. In addition to having a single region-wide EDI ordering interface, SWBT also explains that its other interfaces are the same region-wide, and do not vary from state to state (specifically, the interfaces to its Verigate, DataGate, EDI (preordering), CORBA, LEX, Order Status, Provisioning Order Status, and Trouble Administration systems). *Id.* at para. 7.

support for both of these points, indicating that the EDI interface uses the same computer code in each state, and that the business rules and user guides are the same.³¹⁴ Also, the evidence in the record does not indicate that state-specific inputs, such as different product codes, require carriers to modify their interfaces or even their procedure for submitting orders.³¹⁵ To the contrary, as SWBT explains, competing carriers input the product codes (most of which do not vary from state to state) into the same order fields on the order form.³¹⁶ Finally, and perhaps most significantly, we find that SWBT's assertion that carriers in Kansas and Oklahoma have access to the same OSS interface as in Texas is not refuted by any carrier active in Kansas and Oklahoma. Indeed, SWBT notes that several carriers use EDI in all three states,³¹⁷ and none have placed any evidence in the record to refute SWBT's assertion that EDI can be used region-wide.

115. Third, SWBT provided additional evidence, as urged by the Department of Justice, regarding the use of one order processor (its "SORD" processor) in St. Louis to handle resale and wholesale orders in Kansas and Oklahoma, and another in Dallas to handle resale and wholesale orders in Texas. SWBT explains that its two SORD processors are the same type of hardware running identical software. Ernst & Young's conclusion that these processors are the same, based on a review of the computer code used by these systems, supports this assertion. WorldCom correctly points out that SWBT would have to perform software updates and other changes that affect SORD simultaneously, or risk disrupting order processing for carriers operating both in Texas and in SWBT's other in-region states.³¹⁸ We do not find that this creates a current problem, however, and note that a system change that results in discriminatory treatment of competing carriers would subject SWBT to the possibility of fines and an enforcement action.³¹⁹

116. Finally, we find that SWBT has adequately addressed the Department of Justice's concerns relating to the scalability of its manual processes. SWBT provided additional evidence

³¹⁴ See SWBT Ham Reply Aff. at paras. 8 and 19; Ernst & Young Supplemental Report at 8 and 11-12.

³¹⁵ While WorldCom argues that the use of different product codes in each state *may* affect the performance of SWBT's OSS, it offers no evidence to suggest that it actually does so. See WorldCom Comments at 4-5; WorldCom Lichtenberg & Sivori Decl. at 18-20; Letter from Keith L. Seat, Senior Counsel, Federal Law and Public Policy, WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission dated January 3, 2001, at 4-7 (WorldCom January 3 *Ex Parte* Letter). WorldCom January 3 *Ex Parte* Letter at 4-7. If SWBT's systems fail properly to recognize these state-specific codes – whether in Texas, Kansas or Oklahoma – and the timely processing of carriers' orders is affected, SWBT would be subject to a possible enforcement action under section 271(d)(6).

³¹⁶ See SWBT Ham Reply Aff. at para. 14.

³¹⁷ See SWBT Ham Reply Aff. at para. 9 and Attach. B.

³¹⁸ See WorldCom McMillon & Lichtenberg Decl. at para. 21.

³¹⁹ Indeed, if SWBT modifies SORD, SORD software, or any other OSS system, in a manner that impacts competing carriers, it must provide adequate advance notice so that such carriers may make necessary changes to their systems and procedures.

in its reply affidavits describing its process for anticipating competing carriers' demands, and for hiring and training additional employees necessary to process increased volumes of transactions. Moreover, if SWBT is unable to keep pace with increased competing carrier demand in the future, and performance deteriorates, the company would open itself to the possibility of substantial liability under the state performance plans, and also to enforcement action by the Commission.

117. Several commenters also argue that SWBT provides only a partial showing that it uses a common OSS in Kansas, Oklahoma and Texas and, thus, that it cannot rely on its Texas OSS in this proceeding. We find that this argument does not warrant a finding of checklist noncompliance for the same reasons, discussed above, that we found SWBT to have answered the Department of Justice's similar concerns. Specifically, we find no support in the record that OSS differences identified by WorldCom – the use of different product codes and the existence of two SORD processors – leads to different OSS performance from state to state or inhibits a carrier's opportunity to compete. We also find unpersuasive WorldCom's general speculation that other OSS differences are "likely" to exist.³²⁰

118. We also disagree with WorldCom's contention that SWBT's application should fail because a third party did not examine SWBT's OSS in Kansas and Oklahoma. In prior section 271 orders, we have held that third party tests can provide critical information about the functionality and performance of a BOC's OSS. We have not, however, stated that checklist compliance cannot be proven without a third party test of an applicant's OSS. Indeed, we emphasize that our analysis of an applicant's OSS rests on a wide range of evidence, of which evidence from third party tests is but one part. The need to rely on a third party test is reduced in this instance because SWBT has established the relevance of its Texas OSS. We agree with the Department of Justice that, in this respect, SWBT's is a "sensible and efficient approach that can avoid the delay and expense of redundant testing."³²¹

c. Pre-Ordering

119. Based on the evidence in the record, we conclude that SWBT demonstrates that it provides nondiscriminatory access to its OSS pre-ordering functions. Specifically, we find that SWBT demonstrates that: (i) SWBT offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies; (ii) competing carriers successfully have built and are using application-to-

³²⁰ See WorldCom McMillon & Lichtenberg Decl. at para. 22. While competing carriers, such as WorldCom, are not well-positioned to identify differences in SWBT's proprietary back-office systems, we find that SWBT has provided sufficient evidence, particularly in its Reply Comments and Affidavits, to demonstrate that key aspects of its OSS are common in Texas, Kansas and Oklahoma. Moreover, as WorldCom itself recognizes, however, "it is quite likely that the OSS [in Kansas, Oklahoma and Texas] is more similar between these three states than between other states in the country" because "a single legacy company – SWBT – historically provided local telephone service for all three states." WorldCom Comments at 6-7.

³²¹ Department of Justice Evaluation at 28.

application interfaces to perform pre-ordering functions and are able to integrate pre-ordering and ordering interfaces; and (iii) its pre-ordering systems provide reasonably prompt response times and are consistently available in a manner that affords competitors a meaningful opportunity to compete.

120. The pre-ordering phase of OSS generally includes those activities that a carrier undertakes to gather and verify the information necessary to place an order.³²² Most of the pre-ordering activities undertaken by a competing carrier to order resale services and UNEs from the incumbent are analogous to the activities a BOC must accomplish to furnish service to its own customers. For example, in this proceeding and in accordance with the *UNE Remand Order*, we require SWBT to provide competing carriers with access at the pre-ordering stage to the same detailed information SWBT makes available to itself concerning loop make-up information so that competitors may make fully informed judgments about whether to provision xDSL service to end users.³²³ In prior orders, we have emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC.³²⁴

(i) Access to Loop Qualification Information

121. In this proceeding, we require a BOC to demonstrate for the first time that it provides access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*.³²⁵ In particular, we require SWBT to provide access to loop qualification information as part of the pre-ordering functionality of OSS. In the *UNE Remand Order*, we required incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to themselves, and in the same time frame, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the

³²² See *SWBT Texas Order*, 15 FCC Rcd at 18426, para. 148; *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129. In prior orders, the Commission has identified the following five pre-order functions: (1) customer service record (CSR) information; (2) address validation; (3) telephone number information; (4) due date information; (5) services and feature information. See *id.*, 15 FCC Rcd at 4015, para. 132.

³²³ As we have explained in the prior proceedings, because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to "pre-qualify" a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service. See *id.*, 15 FCC Rcd at 4021, para. 140.

³²⁴ *SWBT Texas Order*, 15 FCC Rcd at 18426, para. 148; *Bell Atlantic New York Order* at 4014, para. 130; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20661-67, para. 105.

³²⁵ See *UNE Remand Order*, 15 FCC Rcd 3696, 3885, paras. 427-431. This aspect of the *UNE Remand Order* had not taken effect at the time SWBT filed its second section 271 application for the State of Texas, and thus was not part of our review in that proceeding. See *SWBT Texas Order*, 15 FCC Rcd at 18367-68, para. 28.

requesting carrier intends to install. At a minimum, SWBT must provide carriers with the same underlying information that it has in any of its own databases or internal records.³²⁶ We explained that the relevant inquiry is not whether SWBT's retail arm has access to such underlying information but whether such information exists anywhere in SWBT's back office and can be accessed by any of SWBT's personnel. Moreover, SWBT may not "filter or digest" the underlying information and may not provide only information that is useful in the provision of a particular type of xDSL that SWBT offers. SWBT must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that SWBT provides such information to itself. Moreover, SWBT must also provide access for competing carriers to the loop qualifying information that SWBT can itself access manually or electronically. Finally, SWBT must provide access to loop qualification information to competitors within the same time intervals it is provided to SWBT's retail operations or its advanced services affiliate, Advanced Solutions, Inc. (ASI).³²⁷ As we stated in the *UNE Remand Order*, however, "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information."³²⁸

122. SWBT demonstrates that it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies. SWBT provides three ways for competing carriers to obtain loop make-up information. As we discuss in more detail below, competitors can request access to actual loop make-up information, theoretical, or design, loop make-up information,³²⁹ or can request that

³²⁶ See *id.* For example, SWBT must provide (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. See *id.*

³²⁷ The Commission required SBC to create a separate advanced services affiliate as a condition of the company's merger with Ameritech. See *Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, 14 FCC Rcd 14712 (1999) (*SBC/Ameritech Merger Order*). We note that the Court of Appeals for the District of Columbia recently issued a decision overturning the Commission's determination, in conjunction with the SBC-Ameritech merger, that the merged company could avoid the resale obligation of section 251(c)(4) for the sale of advanced services if it provided those services through a separate affiliate. *Association of Communications Enterprises v. Federal Communications Commission*, 2001 WL 20519 (D.C. Cir. Jan. 9, 2001). Although this decision addresses the separate affiliate requirements of the *SBC/Ameritech Merger Order*, it does not impact our ability to rely on SWBT's performance towards its separate affiliate in evaluating this application.

³²⁸ *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-431.

³²⁹ Design loop information is the theoretical make-up of a loop based on the standard loop design for the longest loop in the end user's distribution area. See *SWBT Ham Aff.* at para. 136. SWBT also provides a "green/yellow/red" graphic summary of the design loop information that allows requesting carriers to make a (continued....)

SWBT perform a manual search of its paper records to determine actual loop information. SWBT provides competitors access to actual loop make-up information contained in SWBT's back-end system Loop Facilities Assignment and Control System (LFACS) through the pre-ordering interfaces Verigate, Datagate and EDI/CORBA. Because LFACS was designed as a provisioning system, LFACS will provide the requesting carrier with actual information on the loop that SWBT or ASI, would use if it were going to provision the service requested.³³⁰ If, however, actual loop make-up information is not available in LFACS, SWBT will automatically provide theoretical, or design, loop makeup information. Specifically, SWBT will cause a query to be made into its LoopQual database for loop information based on a standard loop design for the longest loop in that end user's distribution area.³³¹ The requesting carrier can then use this theoretical loop information to determine if it would be willing to provide xDSL service to that end-user. Additionally, a carrier may also request loop design information without having to first request an actual loop make-up query. Finally, carriers may also request that SWBT perform a manual search of SWBT's engineering records. Such a request may be submitted via Verigate or DataGate directly to SWBT's engineering operations personnel. Once SWBT engineers complete the manual search, they will update the information in LFACS and the competing carrier can either receive the results via email or review the results in LFACS.³³²

123. We find that SWBT provides these mechanized and manual processes to competing carriers in a nondiscriminatory fashion and allows access to loop qualification functionality as a pre-ordering function in substantially the same manner as it does for itself. Where loop make-up information resides in an electronic format within SWBT's systems, SWBT enables competing carriers access to this information. SWBT uses the LFACS database to determine actual loop makeup information for its retail operations in exactly the same fashion that it is made available to competing carriers.³³³ LFACS will automatically return information on an available, non-loaded copper loop as if it were provisioning the requested service to the specific address.³³⁴ SWBT uses this same mechanized information for its own internal provisioning³³⁵ and ASI receives the exact same information via the exact same interfaces.³³⁶ In

(Continued from previous page)

determination if a loop could support xDSL capabilities. "Green/yellow/red" is available to both competitors and SWBT. See SWBT Chapman Aff. at paras. 21-28; SWBT Chapman Reply Aff. at para. 4.

³³⁰ SWBT Cullen Reply Aff. at paras. 3 and 4.

³³¹ SWBT Ham Aff. at para. 136; SWBT Cullen Reply Aff. at para. 3, n.3.

³³² SWBT Chapman Aff. at paras. 30-31.

³³³ SWBT Cullen Reply Aff. at para. 3.

³³⁴ *Id.* at para. 4; SWBT Chapman Reply Aff. at para. 5. SWBT will automatically perform a line and station transfer to ensure that competing carriers can provide DSL capable services on any spare loop available to a specific end-user's address in the event that the existing loop is incapable of supporting DSL service, such as a digital loop carrier, or if only one loop existed. In these circumstances, SWBT might connect portions of another loop to create an additional loop over which it could provide the DSL service. See SWBT Welch Reply Aff. at para. 5.

³³⁵ SWBT Chapman Reply Aff. at para. 6.

addition, when performing the manual lookup, SWBT performs the same process and returns the same type of information to the requestor regardless of whether it is for a competing carrier, or ASI, or itself.³³⁷

124. Furthermore, SWBT allows competing carriers access to the same detailed information about the loop that is available in its records or databases. Specifically, in accordance with the requirements detailed in the *UNE Remand Order*,³³⁸ SWBT provides competing carriers access to information about: (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.³³⁹

125. SWBT's performance data reflect that it provides responses to competing carrier requests for loop information in substantially the same time and manner as for itself.³⁴⁰ Significantly, commenters have not asserted in this proceeding that SWBT returns loop make-up information in an untimely manner.

126. Commenters, however, have raised a number of claims alleging that SWBT's provision of loop make-up information is discriminatory and violates the requirements of the *UNE Remand Order*. For the reasons discussed below, we reject these claims. IP Communications claims that SWBT's actual loop makeup information database is inaccurate and thus harms competing carriers when they place orders for loops based on inaccurate information.³⁴¹ As we noted above, when searching for loop qualification information, both competing carriers and SWBT utilize the LFACS system.³⁴² Thus, any inaccuracies in SWBT's

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³³⁶ SWBT Cullen Reply Aff. at para. 3. The interfaces are the GUI Verigate, application-to-application Datagate and the industry standard EDI/CORBA.

³³⁷ See SWBT Chapman Aff. at para. 21.

³³⁸ See *UNE Remand Order*, 15 FCC Rcd at 3885, para. 427.

³³⁹ See SWBT Chapman Aff. at para. 18.

³⁴⁰ See SWBT Aggregated Performance Data, Measurement No. 1, SWBT Region-wide, at 271-No 1c; SWBT Aggregated Performance Data, Measurement No. 1.1-01, SWBT Region-wide, at 271-No 1.1. We note that SWBT reports pre-ordering response time and availability on a region-wide basis. Since the record in this proceeding demonstrates that SWBT's pre-ordering systems and processes are the same throughout the five-state region, we need not review state specific performance data.

³⁴¹ IP Comments at 15-17.

³⁴² SWBT Cullen Reply Aff. at para. 3.

database, because they affect SWBT in the same fashion as competing carriers, are not discriminatory.

127. We also reject Allegiance's and McLeodUSA's assertion that SWBT's use of the green/yellow/red loop information and the theoretical loop design information violates the *UNE Remand Order*.³⁴³ These commenters contend that SWBT's use of this information denies competing carriers access to more detailed loop information and does not allow carriers to identify the physical attributes of the loop to make a more informed judgment about the possibility of offering service. We reject this contention because we find that this information is provided to competitors in addition to the actual loop makeup information. As noted above, the design loop information provided by SWBT is information on a theoretical loop based on a standard loop design for the longest loop in that end user's distribution area.³⁴⁴ SWBT's green/yellow/red designation is a graphical summary of the design loop information and an alternative way to provide the competitor with help in determining if the theoretical loop is adequate for providing advanced services.³⁴⁵ In addition to design loop information and green/yellow/red information, competing carriers can also access SWBT's actual loop makeup information, to the extent it is available and, upon request, SWBT will manually search its paper records to determine the actual makeup of the loop.³⁴⁶ We therefore find that SWBT's green/yellow/red designation merely supplements the other formats of loop makeup information SWBT provides.³⁴⁷ In accordance with the *UNE Remand Order*, we find that SWBT provides competing carriers access to the same "detailed information" about a loop that is available in its own databases or other internal records.³⁴⁸

128. We also disagree with IP Communications' assertion that SWBT violates the *UNE Remand Order* by allowing competing carriers access only to "filtered" loop make-up information.³⁴⁹ According to IP, when SWBT returns actual and manual loop make-up information to the competing carrier, it provides information on only the "best" loop for the competing carrier, screening out information on other possibly available loops.³⁵⁰ IP asserts that there are numerous situations where a competing carrier may not want the loop SWBT provides

³⁴³ Allegiance Comments at 33; McLeodUSA Comments at 34.

³⁴⁴ SWBT Ham Aff. at para. 136; SWBT Cullen Reply Aff. at para. 3, n.3.

³⁴⁵ See SWBT Chapman Aff. at paras. 22-28.

³⁴⁶ SWBT Chapman Aff. at para. 22-32; SWBT Chapman Reply Aff. at para. 4.

³⁴⁷ *Id.*

³⁴⁸ *UNE Remand Order*, 15 FCC Rcd at 3885, para. 427.

³⁴⁹ IP Comments at 13.

³⁵⁰ *Id.*; see also Letter from Howard J. Siegel, Vice President of Regulatory Policy, IP Communications Corp. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-217, at 2 (filed November 30, 2000) (IP November 30, 2000 *Ex Parte* Letter).

and therefore needs to view loop information on all available loops.³⁵¹ IP suggests that by failing to return information on all possible loops at an address, SWBT impermissibly “filters” the loop make-up information. SWBT acknowledges that it returns information on only one loop, but contends that the *UNE Remand Order* does not require more.³⁵² We find that it is not self-evident from the *UNE Remand Order* that a BOC must provide loop make-up information on all loops that serve a particular address and thus we do not find SWBT to be in violation of that order. Furthermore, it would be inappropriate to resolve this issue within the context of a section 271 proceeding. This issue is best resolved by a rulemaking proceeding in which all interested parties are able to comment. Therefore, we invite IP, or any other interested party, to file a petition for declaratory ruling or a petition for a rulemaking on this issue.³⁵³

129. Finally, we reject IP’s contention that SWBT does not comply with the *UNE Remand Order* because SWBT fails to return information on copper loops when end users are served by fiber (e.g., where SWBT has deployed fiber to remote terminals under its “Project Pronto”). In such instances, IP states, SWBT returns information on characteristics of the loop served by the digital loop carrier that may be the “best” loop to a given end user but which is incompatible with the competing carrier’s service.³⁵⁴ We agree that this practice, if true, would appear to violate the *UNE Remand Order*. In its reply comments, however, SWBT satisfactorily answers IP’s assertion. SWBT explains that, in such an instance, its systems would automatically return loop make-up information on a copper loop running to the end user, if one exists or if a spare loop can be assigned, rather than make-up information on the fiber loop.³⁵⁵ Furthermore, SWBT clarifies that it instructs its engineers who perform manual look-ups to return information on an all-copper loop in those situations where the end user is served by both a digital loop carrier and the copper loop.³⁵⁶ We find that this satisfies the requirements of the *UNE Remand Order* and this checklist item.

(ii) Pre-Ordering Functionality and Integration

130. We also find that SWBT provides carriers in Kansas and Oklahoma nondiscriminatory access to all pre-ordering functions and enables these carriers to integrate pre-

³⁵¹ IP Comments at 13-14.

³⁵² See SWBT Reply at 69-70. SWBT explains that, when a pre-order request for actual loop make-up information is made and actual information is available, LFACS will transmit to the requestor information on the loop that LFACS would use if LFACS were provisioning the service requested.

³⁵³ We note that, even in the event that the *UNE Remand Order* requirements are read to mean only the “best” loop, state commissions would nevertheless have the authority to impose additional obligations consistent with the Act.

³⁵⁴ IP November 30, 2000 *Ex Parte* Letter.

³⁵⁵ SWBT Welch Reply Aff. at paras. 5-6; SWBT Chapman Reply Aff. at para. 8.

³⁵⁶ SWBT Chapman Reply Aff. at para. 11.

ordering and ordering functions. SWBT offers requesting carriers in Kansas and Oklahoma access to the same application-to-application interface, DataGate, that it makes available to carriers in Texas.³⁵⁷ As in the Texas order, we find that the DataGate interface allows competing carriers to access the same pre-ordering functions that SWBT provides to itself.³⁵⁸ The DataGate interface allows competing carriers to perform a wide range of pre-ordering functions for both resale services and UNEs. Specifically, carriers are able to use DataGate to: (1) validate addresses; (2) retrieve customer service records; (3) select and reserve telephone numbers; (4) determine services and features available to a customer; (5) obtain due date availability; (6) access loop qualification information; (7) access DSL loop pre-qualification information; (8) determine theoretical DSL loop length; (9) view a customer's directory listing; (10) determine dispatch requirements; (11) retrieve local primary intraLATA carrier (LPIC) and primary interexchange carrier (PIC) list; (12) access the Common Language Location Identifier (CLLI) for the serving central office; and (13) verify channel facility assignment.³⁵⁹ We note that no commenter alleges that SWBT fails or refuses to offer any of these specific pre-ordering functions.

131. SWBT also offers access to these same pre-ordering functions through EDI and CORBA interfaces. EDI and CORBA, which operate according to industry standards, overlay SWBT's DataGate system and allow competing carriers to use industry standard interfaces to access DataGate's functionality.³⁶⁰ As we noted in the *SWBT Texas Order*, the availability of these interfaces is beneficial to competing carriers and we commend SWBT for continuing to develop and promote them.³⁶¹ However, we do not consider the measurements associated with the timeliness and availability of EDI/CORBA in finding that SWBT meets the nondiscrimination requirements for OSS pre-ordering functions.³⁶² Specifically, we rely only

³⁵⁷ The Ernst & Young Report found that SWBT's DataGate interface was the same throughout SWBT's five-state region. See SWBT Br. at 20, n. 32; Ernst & Young Supplemental Report, Kelly Aff., Attach. A at 4.

³⁵⁸ *SWBT Texas Order*, 15 FCC Rcd at 18427, para. 149. The DataGate interface is based on SWBT's proprietary pre-ordering functionality, and allows competing carriers to acquire pre-ordering information using their own software programs or applications. See SWBT Ham Aff. at para. 123.

³⁵⁹ See *id.* at 118.

³⁶⁰ See *id.* at para. 120.

³⁶¹ *SWBT Texas Order*, 15 FCC Rcd at 18427-28, para. 150.

³⁶² In the Texas proceeding, because SWBT did not report measurements concerning its EDI/CORBA interfaces, we relied solely on its measurements tracking the timeliness and availability of DataGate and VeriGate. However, in this proceeding, SWBT reports measurements reporting both the availability and timeliness of EDI/CORBA. See SWBT Aggregated Performance Data, Measurement Nos. 1-12 through 1-15, SWBT Region-wide, at 271-No. 1d and SWBT Aggregated Performance Data, Measurement Nos. 4-01.6 through 4-01.11, SWBT Region-wide, at 271-No. 4b. Although no commenter complained about the availability or timeliness of these interfaces, we do not rely upon them in making our finding. SWBT itself does not explain or rely on these new measurements in support of its pre-ordering showing.

upon SWBT's performance measurements tracking the timeliness and availability of the DataGate and VeriGate pre-ordering interfaces.³⁶³

132. SWBT demonstrates that competing carriers successfully have built their systems to connect with SWBT's region-wide DataGate interface. SWBT states that five region-wide carriers are utilizing DataGate for pre-ordering, two of which are certified to do business in Kansas or Oklahoma.³⁶⁴ Furthermore, a review of performance data submitted by SWBT confirms that carriers currently are using DataGate to perform many of the pre-ordering transactions listed above. Specifically, the data show that competing carriers are using DataGate to retrieve customer service records, validate addresses, select and reserve telephone numbers, determine services and features available to a customer, obtain due date availability, and retrieve local primary intraLATA carrier (LPIC) and primary interexchange carrier (PIC) list.³⁶⁵

133. We find that SWBT has shown that it allows competing carriers to integrate successfully pre-ordering information obtained from the DataGate interface with SWBT's EDI ordering functions.³⁶⁶ We examined this issue closely in the Texas proceeding and found that the evidence in the record—including statements from competing carriers and the conclusions of a third party tester—demonstrated that these functions could be successfully integrated.³⁶⁷ We reach the same conclusion in this proceeding, based on SWBT's demonstration that competing carriers in Kansas and Oklahoma are utilizing the same interfaces. We also note that the Oklahoma Commission found that DataGate could be integrated with SWBT's EDI ordering function.³⁶⁸ Furthermore, commenters have not argued that competing carriers are unable to integrate DataGate with EDI ordering functions. Moreover, one of the competing carriers that integrated pre-ordering and ordering in Texas is also operating in Kansas and Oklahoma and has not complained of difficulties in placing orders in these states.³⁶⁹

³⁶³ See SWBT Aggregated Performance Data, Measurement Nos. 1 and 2, SWBT Region-wide, at 271-No. 1a and SWBT Aggregated Performance Data, Measurement No. 4, SWBT Region-wide, at 271-No. 4a. The Verigate interface is a graphical user interface that operates with Windows for competing carriers that want to utilize LEX or EDI ordering functions but do not want to incur the programming and expenses required for EDI, CORBA and DataGate. See SWBT Ham Aff. at para. 126.

³⁶⁴ SWBT Application at 26; SWBT Ham Aff. at para. 124.

³⁶⁵ See SWBT Aggregated Performance Data, Measurement No. 1, SWBT Region-wide, at 271-1a.

³⁶⁶ SWBT Ham Aff. at para. 123.

³⁶⁷ *SWBT Texas Order*, 15 FCC Rcd at 18432, para. 158. In reaching this conclusion, we rely, in part, on the Telcordia integration test performed as part of the Texas proceeding and we conclude that this test provides us with additional assurance that competing carriers are able to achieve integration while utilizing SWBT's OSS.

³⁶⁸ SWBT Application, Appendix C-OK, Volume 25a-c, Tab 275, at 178.

³⁶⁹ SWBT Ham Aff. at para. 133.

(iii) Interface Response Times and Availability

134. We find that SWBT demonstrates that it provides requesting carriers access to pre-ordering functionality in a manner that allows an efficient competitor a meaningful opportunity to compete. We have held previously that an interface that provides responses in a prompt timeframe and is stable and reliable, is necessary for competing carriers to market their services and serve their customers as efficiently and at the same level of quality as SWBT serves its own customers.³⁷⁰ SWBT's performance data demonstrate that SWBT's Datagate interface has met or exceeded the relevant benchmarks, with only a few scattered disparities, for interface response time and availability in each of the last four months during the same period of time that competing carrier pre-order transactions have increased.³⁷¹ We conclude that these performance disparities had a negligible competitive impact given that SWBT missed the relevant benchmarks by small margins. Significantly, commenters have not argued that SWBT fails to provide timely responses to pre-ordering inquiries or that its DataGate interface is unreliable.³⁷² We therefore conclude that SWBT's interfaces are available in a stable and consistent manner and afford an efficient competitor a meaningful opportunity to compete.

d. Ordering

135. In this section, we address SWBT's ability to provide competing carriers with access to the OSS functions necessary for placing wholesale orders. We find that SWBT demonstrates, with performance data and other evidence, that it provides competing carriers with access to OSS ordering functions, on a timely and consistent basis, and in a manner that allows these carriers a meaningful opportunity to compete.³⁷³ As in prior section 271 orders, we look primarily at the applicant's ability to return order confirmation notices, order reject notices, order completion notices and jeopardies, and its order flow-through rate.³⁷⁴ Significantly, SWBT has

³⁷⁰ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4025 and 4029, paras. 145 and 154.

³⁷¹ See SWBT Aggregated Performance Data, Measurements No. 1 and 2, SWBT Region-wide, at 271-No 1a. The sole exception was Average Response Time within "x" seconds-PIC Data, which SWBT missed in August. In that month, SWBT missed the 95% benchmark for response within 41 seconds by 5%, but was successful in making the 90% benchmark for response within 27 seconds. However, SWBT surpassed the benchmark for this measurement for every other month in the past year. Moreover, SWBT has satisfied the benchmark of 99.5% availability for six of the last seven months. See SWBT Aggregated Performance Data, Measurement No. 4, SWBT Region-wide, at 271-No. 4a (April: 99.7%; May: 100%; June: 100%; July: 100%; August: 100%; September 99.4%; October: 99.7%).

³⁷² SWBT Ham Aff. at para. 24.

³⁷³ Because most of these ordering functions lack a direct retail analogue, our standard of review is to determine whether SWBT's systems and performance allow an efficient carrier a meaningful opportunity to compete. For those functions of the ordering systems for which there is a retail analogue, we shall assess whether SWBT provides competing carriers with access to its OSS systems in substantially the same time and manner as it provides to its retail operations.

³⁷⁴ See *SWBT Texas Order*, 15 FCC Rcd at 18438, para. 170; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-4039, paras. 163-166.

demonstrated that the interfaces, systems, processes and personnel that make up its ordering OSS in Kansas and Oklahoma are essentially the same as those used to process wholesale orders in Texas.³⁷⁵ Our findings from the *SWBT Texas Order* with respect to the functionality of SWBT's ordering OSS, for those aspects that are common to Texas, Kansas and Oklahoma, thus are relevant to our review here. Furthermore, as explained above, data reflecting the performance of SWBT's ordering OSS in Texas also is relevant to our analysis here.

136. We emphasize that we generally look at the totality of the circumstances in analyzing the OSS ordering functions. Performance disparity in one measurement or sub-measurement is unlikely to result in a finding of checklist noncompliance, unless the disparity is dramatic, or absent additional evidence of competitive impact. We review each individual measurement as one part of a larger picture that informs our determination of checklist compliance or non-compliance.

(i) Order Confirmation Notices

137. In prior section 271 orders, we have held that order confirmation notices are important elements of the ordering process, and data demonstrating that they are provided in a timely manner is a key consideration for assessing whether competitors are allowed a meaningful opportunity to compete.³⁷⁶ In this proceeding, we use the same analysis and look to the same performance measurements as in the Texas proceeding where we found that SWBT provides competing carriers timely order confirmation notices. Based on this review, we find that SWBT provides order confirmation notices to competitors in a way that allows them a meaningful opportunity to compete. In making this determination, we look to the data that indicate that SWBT provides competing carriers access to confirmation notices for orders for resale, UNE-P, unbundled loop, xDSL, and number port.

138. SWBT's data indicate that it returns timely order confirmation notices to competing carriers in Kansas and Oklahoma that use mechanized interfaces (EDI and LEX) to submit orders or that submit orders for "manual" processing (i.e. via fax). The data demonstrate that SWBT met the relevant performance benchmark for each service type in both states from July to October 2000 with scattered exceptions.³⁷⁷ With respect to these few exceptions, we

³⁷⁵ See *SWBT Ham Aff.* at paras. 13-18; *SWBT Ham Reply Aff.* at paras. 7, 8, 16, 19 and 29; *SWBT Mah Reply Aff.* at paras. 5, 10, 11, 14, 20; Ernst & Young Report; Ernst & Young Supplemental Report.

³⁷⁶ See *SWBT Texas Order*, 15 FCC Rcd at 18438-40, paras. 163-164 (discussing order confirmation notices). In this instance, as in the *Bell Atlantic New York Order* and the *SWBT Texas Order*, we are not presented with a retail analogue for order confirmation notices, and thus assess whether the process and performance offered by the applicant enables an efficient competitor a meaningful opportunity to compete.

³⁷⁷ See *SWBT Aggregated Performance Data*, Measurement No. 5, Kansas and Oklahoma, at 271-No. 5a-5f; *SWBT Aggregate Performance Data*, Measurement No. 5.1, Kansas and Oklahoma, at 271-No. 5.1a, 5.1b; *SWBT Aggregated Performance Data*, Measurement No. 94, Kansas and Oklahoma, at 271-No. 94a, 94c and 94e. We recognize that a third party review of SWBT's performance data uncovered irregularities in the way SWBT recorded the time that faxed manual orders were received. See *In the Matter of SBC Communications, Inc., Apparent Liability for Forfeiture*, File No. EB-00-IH-0432, Notice of Apparent Liability for Forfeiture, DA 00-2858 (Dec. 20, (continued....))

emphasize that we look at the totality of the circumstances and generally do not view individual performance disparities, particularly if they are isolated and slight, as they are here, as wholly dispositive as to whether SWBT has satisfied its checklist obligations. The performance disparities relate to SWBT's performance in returning manual order confirmation notices for xDSL capable loop orders and, in Kansas, in returning these manual notices for "number port" orders.³⁷⁸ Each of these disparities was minimal.³⁷⁹ Absent evidence of discrimination or competitive harm, we find that SWBT's performance appears to have little competitive impact.

139. We also recognize that performance data for both mechanical and manual order confirmation notices may be inconsistent because order volumes in Kansas and Oklahoma are low. As we stated above, where low volumes render SWBT's performance data in Kansas and Oklahoma inconsistent and inconclusive, data reflecting SWBT's performance in Texas can provide a valuable indication of the commercial readiness of SWBT's OSS. As a result, we look to SWBT's performance in Texas, where SWBT uses the same systems and processes as in Kansas and Oklahoma, to augment our review.³⁸⁰ In sum, SWBT generally satisfied the relevant benchmark in Texas for each sub-category of service and for each ordering interface.³⁸¹ Where SWBT did not satisfy the relevant benchmark in each month, any disparity appears to be competitively insignificant.³⁸² We therefore reject McLeodUSA's contention that SWBT's OSS

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2000) (*SBC Merger Audit NAL*). While this irregularity apparently was not corrected until August 2000, it does not appear that it had a significant impact on SWBT's reported performance data reviewed here, as SWBT's performance was not noticeably different in September and October. In any case, were we to rely exclusively on SWBT's September and October data for these "manual" order confirmation measurements, our conclusions would have been the same.

³⁷⁸ See SWBT Aggregated Performance Data, Measurement No. 5.1-05, Kansas and Oklahoma, at 271-No. 5.1b; SWBT Aggregated Performance Data, Measurement No. 94-15, Kansas, at 271-No. 94e.

³⁷⁹ In Oklahoma, SWBT satisfied the benchmark for xDSL order confirmations in October and missed by only one late notice in July and August and five late notices in September. See *id.* In Kansas, SWBT satisfied the benchmark in August but missed the benchmark by only one late notice in July and October and by two late notices in September. With respect to the number port only orders, SWBT missed the benchmark from by 0.9 percent in September and by 0.7 percent in October.

³⁸⁰ See SWBT Ham Aff. at paras. 13-18; SWBT Ham Reply Aff. at paras. 7, 8, 16, 19 and 29; SWBT Mah Reply Aff. at paras. 5, 10, 11, 14, 20.

³⁸¹ See SWBT Aggregated Performance Data, Measurement No. 5, Texas, at 271-No. 5a-5f; SWBT Aggregated Performance Data, Measurement No. 94, Texas, at 271-No. 94a, 94c and 94e; SWBT Aggregate Performance Data, Measurement No. 5.1, Texas, at 271-No. 5.1a, 5.1b.

³⁸² See SWBT Aggregated Performance Data, Measurement No. 5-07, Texas, ("Percent FOCs Related to xDSL Capable Loops Returned within 'x' Hours – EDI"), at 271-No. 5c (missed the benchmark in August by 3.1 percent and in September by 2.9 percent); SWBT Aggregated Performance Data, Measurement No. 94-15, Texas, ("Percent FOCs Received Within 'X' Hours – Manual"), at 271-No. 94e (missing two of the last four benchmarks by 0.8 percent in August and 4.7 percent in September); and SWBT Aggregated Performance Data, Measurement No. 94-16, Texas, ("Percent FOCs Received Within 'X' Hours – Manual"), at 271-No. 94e (returning 100 percent of notices on-time in three of the last six months).

denies competitors a meaningful opportunity to compete because its order confirmation performance in Texas has deteriorated.³⁸³ We find that SWBT's performance in returning timely order confirmation notices provides efficient competitors with a meaningful opportunity to compete.

140. Based on SWBT's Texas performance, and the factors discussed in the preceding paragraph, we also are not persuaded by Allegiance's contention that SWBT's xDSL disparity denies competitors a meaningful opportunity to compete.³⁸⁴ Furthermore, we reject Allegiance's contention that SWBT is not meeting performance standards for loop ordering and provisioning because it did not satisfy a benchmark in "at least one month" in four measurements involving order confirmation returns for LEX and manual orders.³⁸⁵ As we stated above, we do not view each particular measurement as wholly dispositive of checklist compliance, but will look to the totality of the circumstances in making a determination. Here, these performance discrepancies occur in isolated months and suggest only an insignificant competitive impact. We therefore decline to find checklist noncompliance.

(ii) Order Rejection Notices

141. We conclude that SWBT provides competing carriers with timely order rejection notices in a manner that allows them a meaningful opportunity to compete. SWBT uses the same systems and procedures in Kansas and Oklahoma as it does in Texas to provide mechanically generated rejection notices (returned over the same interface competing carriers use to submit the order) and manually generated rejection notices (returned over a separate graphical user interface).³⁸⁶ Here, SWBT's performance data demonstrate that it returns order rejection notices in a timely manner over both EDI and LEX.³⁸⁷

³⁸³ McLeodUSA Comments at 30.

³⁸⁴ Allegiance Comments at 25.

³⁸⁵ *Id.* at 15.

³⁸⁶ See SWBT Ham Aff. at paras. 13-18; SWBT Ham Reply Aff. at paras. 7, 8, 16, 19 and 29. Errors detected by mechanized edits automatically result in rejects that are returned electronically via LEX or EDI, while errors detected during manual processing result in manually generated rejection notices returned electronically via the "LASR GUI" interface. SWBT Ham Aff. at paras. 193, 201.

³⁸⁷ SWBT has satisfied the standard for timely returns of mechanically generated reject notices by returning more than 97 percent of reject notices within one hour for the past 12 months over LEX and for 11 of the last 12 months over EDI. See SWBT Aggregated Performance Data, Measurement Nos. 10 and 11, Kansas and Oklahoma, at 271-No. 10-11. WorldCom complains that SWBT improperly rejects competitors' UNE-P orders. WorldCom Comments at 13. SWBT, however, working with competing carriers, has taken steps to remedy this problem by (1) implementing an exception report listing for UNE-P conversions that require three different service orders but for which each of the three orders has not yet issued and (2) created a report that shows the UNE-P conversion orders that require three service orders and for which the dates on each of the three orders do not match. See SWBT Noland Reply Aff. at para. 42.

142. SWBT's performance data also demonstrate that it returns manually generated rejection notices in a timely fashion. Although SWBT has not satisfied the six-hour benchmark in two of the last four months in both states, SWBT has returned manual rejection notices, on average, between three and nine hours in Kansas and between three and ten hours in Oklahoma over the last four months.³⁸⁸ In the *SWBT Texas Order*, we found that similar performance satisfied the Commission's nondiscrimination standard.³⁸⁹ Absent any clear evidence of discrimination or competitive harm, we find that this performance also demonstrates compliance with our requirements. We also note that here, as it was in the *SWBT Texas Order*, SWBT's performance is improving.³⁹⁰ We disagree with commenters who claim that SWBT's performance in handling manual rejections demonstrates that SWBT fails to provide nondiscriminatory access to its OSS.³⁹¹ Additionally, because SWBT's ordering system is the same throughout the five-state region and because of the low order volumes in both Oklahoma and Kansas, we look to SWBT's current performance in Texas and note that it satisfies the requisite benchmark.³⁹²

143. In addition, we find unpersuasive Sprint's claim that SWBT rejects too many competing carrier orders.³⁹³ This Commission has not, to date, engaged in a parity or direct benchmark analysis of a carrier's overall reject rate. We have, however, indicated that we will not hold a BOC accountable for rejects that occur for reasons within a competing carrier's control.³⁹⁴ As in the Texas and New York proceedings, order rejections in this instance vary widely by individual carrier, from 12.5 percent to 57.1 percent sent over EDI during September in Kansas alone.³⁹⁵ We find that such a wide variation in the individual reject rates suggests that

³⁸⁸ See SWBT Aggregated Performance Data, Measurement No. 11.1, Kansas and Oklahoma, 271-No.10.1, 11.1. Specifically, from July through October 2000 in Kansas, SWBT returned manually generated rejection notices in an average of 3.69, 8.32, 8.69 and 3.22 hours respectively. In Oklahoma, SWBT returned manually generated rejection notices in an average of 3.05, 6.76, 10.72, and 3.61 hours over the same time period.

³⁸⁹ See *SWBT Texas Order*, 15 FCC Rcd at 18441-42, para. 175.

³⁹⁰ See SWBT Aggregated Performance Data, Measurement No. 10.1-01, Kansas and Oklahoma, at 271 No. 10.1-01, 11.1. SWBT has returned 79.8, 86.1, and 96.5 percent of manual rejection notices within 6 hours in August, September and October, respectively, in Kansas and 82.5, 86.4, and 96.2 percent of manual rejection notices within 6 hours in Oklahoma.

³⁹¹ Allegiance Comments at 28; McLeodUSA Comments at 27; Sprint Comments at 48; WorldCom Comments at 14.

³⁹² See SWBT Aggregated Performance Data, Measurements No. 10 and 11, Texas, at 271-No. 10-11; SWBT Aggregated Performance Data, Measurement No. 10.1-01, Texas, at 271-No.10.1, 11.1; and SWBT Aggregated Performance Data, Measurement No. 11.1, Texas, at 271-No.10.1, 11.1.

³⁹³ Sprint Comments at 47.

³⁹⁴ See *SWBT Texas Order*, 15 FCC Rcd at 18442, para. 176; *Bell Atlantic New York Order*, 15 FCC Rcd at 4044, para. 175; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20673-74, paras. 111-112.

³⁹⁵ SWBT Ham Reply Aff. at para. 47.

the disparate reject rate may be a function of a competing carrier's experience using the system, rather than the system itself. In light of this variation, we conclude that the overall reject rates faced by competing carriers in this instance do not appear to indicate flaws in SWBT's OSS systems or processes. Furthermore, no commenter offers any explanation as to why they may be experiencing higher reject rates in Kansas or Oklahoma than in Texas. We thus conclude that SWBT provides competing carriers with timely order rejection notices in a manner that allows them a meaningful opportunity to compete.³⁹⁶

(iii) Order Flow-Through Rate

144. We find that competing carrier orders flow through SWBT's systems in substantially the same time and manner as they flow through for SWBT's orders.³⁹⁷ In so finding, we employ the same review and look to the same performance measurements as we did in the Texas proceeding. Based on this review, we conclude that SWBT demonstrates that its systems are capable of achieving high overall levels of order flow-through.³⁹⁸

145. Despite some disparities in SWBT's performance, we are able to conclude that SWBT flows-through competing carriers' orders in substantially the same time and manner as its own orders. We reject Sprint's assertion that SWBT's EDI flow through performance in Kansas denies nondiscriminatory access to its OSS.³⁹⁹ While the EDI flow-through rate in Kansas has

³⁹⁶ In the *SWBT Texas Order*, we recognized that SWBT planned to implement a change to its ordering system that would eliminate the need for carriers to list an end user's address on orders involving the migration of an end user from retail or resale to UNE-P service. See *SWBT Texas Order*, 15 FCC Rcd at 18443, para. 178. We discussed how SWBT's electronic processes for provisioning UNE-P faltered when it handled orders containing address-related discrepancies that were not resolved by SWBT's front-end edits. *Id.*, 15 FCC Rcd at 18452-53, para. 194. On May 27, 2000, SWBT released EDI/LSR software that eliminated the requirement to populate the end-user's address on UNE-P conversion service requests. Under SWBT's new process, no address errors would be returned to the competing carrier, and the service address would be provided by SWBT from the CRIS database, even if the street number and name information provided by the CLEC is incorrect. Importantly, no commenter complained about this problem in this proceeding. SWBT's application demonstrates that this change was implemented on May 27, 2000 and allowed SWBT's system to process competitor's orders even when an order had an incorrect end user address. See *SWBT Ham Aff.* at paras. 58-60.

³⁹⁷ Competing carriers' orders "flow-through" if they are submitted electronically and pass through SWBT's ordering OSS into its back office systems without manual intervention. The Commission traditionally uses order "flow-through" as a potential indicator of a wide range of problems that we consider in determining whether a BOC provides nondiscriminatory access to its OSS. See *SWBT Ham Aff.* at para. 205; *Bell Atlantic New York Order*, 15 FCC Rcd at 4033, n. 488. However, we have not considered flow-through rates as the sole indicium of parity and thus have not limited our analysis of a BOC's ordering processes to a review of its flow-through performance data. Instead, we have held that factors that are linked to order flow-through but are more directly indicative of a BOC's OSS performance, such as a BOC's overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems, are relevant and probative for analyzing a BOC's ability to provide access to its ordering functions in a nondiscriminatory manner.

³⁹⁸ See *SWBT Aggregated Performance Data, Measurement No. 13, Kansas and Oklahoma*, at 271-No. 13a.

³⁹⁹ Sprint Comments at 47. See also Department of Justice Evaluation at 34.

been as low as 61.1 percent in August, it has also been as high as 96.8 percent in July. This inconsistency may be attributable to the low number of orders submitted over EDI, which was as low as 33 in August, as well as the carriers' inexperience using the EDI interface. Evidence submitted by SWBT demonstrates that the two largest competing carriers in Kansas (in terms of the volume of orders submitted via EDI) achieved high flow-through rates.⁴⁰⁰ Additionally, since the Ernst & Young report found that SWBT's pre-ordering and ordering interfaces were the same region-wide, we look to Texas to address the inconsistent performance results. SWBT's Texas performance indicates that competitors' orders flowed through between 91.8 and 94.4 percent of EDI orders in the last four months and, moreover, achieved better than parity results in each month.⁴⁰¹

146. We also reject commenters' assertion that SWBT discriminates against competing carriers because its LEX flow-through rate in Oklahoma is lower than its analogous retail flow-through rate.⁴⁰² The record in this proceeding does not reflect that SWBT's LEX flow-through fails to provide competitors with nondiscriminatory access to its OSS.⁴⁰³ SWBT points out that competing carriers' individual flow through rates vary, and that competing carriers that place a larger number of orders in Oklahoma attain better flow-through rates.⁴⁰⁴ We have consistently stated that a BOC is not accountable for orders that are rejected or fail to flow through due to competing carriers' mistakes.⁴⁰⁵ Moreover, as in the *SWBT Texas Order*, we place more weight on EDI flow-through results than on the LEX flow-through results because EDI is the industry standard application-to-application interface.⁴⁰⁶ We conclude that the LEX flow-through rate in Oklahoma indicates that competing carriers' orders are handled in a nondiscriminatory manner and, absent evidence of significant competitive impact, this satisfies our inquiry on this matter.

⁴⁰⁰ The first carrier flowed through 100 percent of a total of 133 orders during the most recent four-month period. The second carrier achieved flow-through rates of 91 to 100 percent during the same time period (with the exception of one month in which SWBT failed to flow through 2 of 8 orders). SWBT Ham Reply Aff. at para. 52.

⁴⁰¹ See SWBT Aggregated Performance Data, Measurement No. 13, Texas, at 271-No. 13a.

⁴⁰² See Allegiance Comments at 29; McLeodUSA Comments at 28; Sprint Comments at 48.

⁴⁰³ We have, in past section 271 applications, used flow-through as a potential indicator of a wide range of problems with a BOC's OSS. See *SWBT Texas Order*, 15 FCC Rcd at 18444, para. 179. We do not find that the flow-through rate in Oklahoma (between 70 and 80 percent in recent months), in itself, warrants a finding of checklist non-compliance, nor does the record in this proceeding indicate that this level of flow-through is indicative of the types of problems identified in prior orders. We thus disagree with Sprint's assertion that the LEX flow-through rate, by itself, shows that SWBT's OSS is neither scaleable nor reliable and McLeodUSA's and Allegiance's assertion that SWBT has not shown that it flows through competitors orders in a nondiscriminatory fashion. See Sprint Comments at 48; McLeodUSA Comments at 28; Allegiance Comments at 29.

⁴⁰⁴ See SWBT Ham Reply Aff. at para. 56.

⁴⁰⁵ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4044, para. 175.

⁴⁰⁶ See *SWBT Texas Order*, 15 FCC Rcd at 18444, para. 180, n.489.

(iv) Jeopardy Notices

147. We find that SWBT provides “jeopardy” notices to competing carriers in a nondiscriminatory manner. In analyzing SWBT’s performance in returning timely jeopardy notices, we review the same systems and procedures as in the Texas proceeding.⁴⁰⁷ SWBT provides mechanized jeopardy notifications to competing carriers via LEX or EDI if it determines, after a service appointment is scheduled, that the necessary facilities are unavailable.⁴⁰⁸ We conclude that SWBT provides “no facilities” jeopardy notices to competing carriers and to its own operations in substantially the same time and manner. SWBT provides these jeopardy notices to competitors and to itself in the same manner using the same databases.⁴⁰⁹

148. SWBT also provides a second type of electronic jeopardy notification over a web-based GUI. SWBT explains that these GUI jeopardies include, for example, instances where a dispatch technician is unable to access an end user’s property or discovers that additional driving instructions are needed.⁴¹⁰ We also conclude that SWBT’s process for returning these “other” jeopardy notifications provides efficient carriers with a meaningful opportunity to compete. SWBT began reporting in October the percentage of orders that receive SWBT caused jeopardy notices and the average amount of time SWBT takes to return them.⁴¹¹ We note that, based on the October data, SWBT’s performance appears to indicate that it is returning jeopardy notifications quickly and on a small percentage of orders.⁴¹²

149. WorldCom argues again, as it did in the Texas 271 that flaws in SWBT’s jeopardy process in Texas – specifically, that too many orders receive jeopardies and that jeopardies are sent too late in the process – deny carriers a meaningful opportunity to compete.⁴¹³ We conclude again that the record in this proceeding does not support its claim that an unreasonably high number of jeopardy notifications are returned to competing carriers. SWBT provides data indicating that less than four percent of all competing carriers’ orders are placed into jeopardy

⁴⁰⁷ See SWBT Noland/Smith Aff. at para. 70.

⁴⁰⁸ This “no facilities available” jeopardy notice is the only type of jeopardy notification SWBT provides within its retail operations. See SWBT Noland/Smith Aff. at para. 66.

⁴⁰⁹ *Id.* at para. 70.

⁴¹⁰ *Id.* at paras. 66, 67, and 72.

⁴¹¹ See SWBT Aggregated Performance Data, Measurement Nos. 10.2 and 11.2, Kansas and Oklahoma, at 271-No. 10.2, 11.2.

⁴¹² We can place only limited weight on this performance data as it represents only one month of performance and because SWBT does not provide an explanation for this new measurement.

⁴¹³ See WorldCom Comments at 13; WorldCom Reply Comments at 31; WorldCom January 3, 2001 *Ex Parte* Letter at 8-10.

status.⁴¹⁴ While WorldCom claims that a slightly higher percentage of its order receive jeopardy notifications, we note that this number has declined recently.⁴¹⁵ Furthermore, as we noted in the *SWBT Texas Order*, SWBT is held accountable through its performance measurements for instances where SWBT-caused jeopardy situations result in missed due dates. As discussed below, SWBT misses fewer due dates for competing LECs than it does for its own retail operations, across almost all categories of service. Accordingly, the record in this proceeding indicates that SWBT's performance with respect to jeopardy notices, in the context of SWBT's overall acceptable performance for ordering and provisioning, does not warrant a finding of checklist noncompliance.

(v) Order Completion Notices

150. SWBT returns service order completion notices (SOCs) to competing carriers in Kansas and Oklahoma in the same manner and following the same procedures as it does in Texas and we thus analyze the same systems that we found to be nondiscriminatory in the Texas proceeding.⁴¹⁶ We conclude that SWBT provides order completion notices to competing carriers in a nondiscriminatory manner. Since there is no equivalent retail process, SWBT's performance is measured against a benchmark.⁴¹⁷ Here, we base our finding that SWBT provides sufficient order completion notices on SWBT's timeliness in providing service order completion notices to competing carriers. The data indicate that SWBT generally meets the benchmark for orders submitted via the electronic interfaces (LEX and EDI).⁴¹⁸ While SWBT's performance on notices returned via EDI in Kansas has been inconsistent in recent months, we believe this performance is attributable to the low volumes of orders, and therefore we look to Texas performance. In Texas, over the past four months, SWBT consistently satisfied the benchmark for both EDI and

⁴¹⁴ See *SWBT Noland/Smith Aff.* at para. 69.

⁴¹⁵ WorldCom claims that SWBT put into jeopardy status 8.7 percent of WorldCom's orders in August, 6.8 percent in September and 6.0 percent in October.

⁴¹⁶ See *SWBT Ham Aff.* at paras. 13-18; *SWBT Ham Reply Aff.* at para. 7. An order completion notice informs a competing carrier that SWBT has completed the installation of the service requested by the particular order.

⁴¹⁷ See *SWBT Texas Order*, 15 FCC Rcd at 18448-49, para. 187.

⁴¹⁸ Specifically, SWBT has returned 97 percent of these notices within a day of work completion over LEX in Kansas for the past eight months and in Oklahoma for the past two of the last four months. In two months where SWBT's Oklahoma LEX performance fell below the 97 percent benchmark, it did so by less than two percentage points, an amount that we find has little significant competitive impact. See *SWBT Aggregated Performance Data, Measurement No. 7.1, Oklahoma*, at 271-No. 7.1, 9. Over EDI, SWBT satisfied the benchmark four of the last six months in Oklahoma and one of the last four months in Kansas. For EDI orders submitted in Kansas, SWBT's performance varied from 100.0 percent in July to 78.7 percent in September. SWBT returned 100.0, 92.6, 78.7 and 88.6 percent of order completion notices within a day of completion over EDI in Kansas. Considering the totality of the evidence, we find that SWBT's EDI performance is sufficient in light of the fact that SWBT satisfied the benchmark in Kansas seven of the last 11 months.

LEX.⁴¹⁹ We therefore find that SWBT provides competing carriers with a meaningful opportunity to compete by returning timely order completion notices.

151. We reject WorldCom's complaint that SWBT discriminates against competitors by returning late service order confirmation notices for orders placed in Texas. WorldCom asserts that orders drop out of SWBT's OSS, which require manual interventions by SWBT's personnel. As a result, the return of SOC's is significantly slowed and competitors cannot begin billing end users. WorldCom admits, however, that SWBT has, in recent months, significantly reduced the number of late SOC's returned to competitors and, when WorldCom transmits a list of missing SOC's to SWBT, the SOC's are returned to WorldCom quickly.⁴²⁰ We also find unpersuasive WorldCom's speculative complaint that SWBT's solution to this problem of assigning additional manual resources jeopardizes SOC return in the future when those manual resources are not present.⁴²¹ We note that SWBT's performance in returning timely SOC's for EDI orders is adequate.⁴²² If we find that WorldCom is correct and SWBT's solution to this former problem is a staffing solution, we expect SWBT to continue to assign resources in a fashion that provides competitors with a meaningful opportunity to compete.

(vi) Other Issues

152. We also find that SWBT makes available sufficiently detailed interface design specifications for EDI that enable competing carriers to modify or design their systems in a manner that will allow them to communicate with SWBT's systems and interfaces. In fact, several competing carriers have constructed and are using EDI interfaces throughout SWBT's region.⁴²³ In the *SWBT Texas Order*, we found that sixteen carriers were in production using SWBT's EDI interface gateway, and additional carriers were testing the EDI requirements.⁴²⁴ Now, SWBT has twenty-nine carriers utilizing its EDI interface, each of which could place an order on the same EDI gateway to submit a local service request in Kansas, Oklahoma or Texas.⁴²⁵ We thus conclude that SWBT makes available access to its EDI ordering systems and procedures to allow a competing carrier a meaningful opportunity to compete.

153. *Three-Order Process.* Finally, WorldCom asserts that SWBT's so called "three-order process," whereby SWBT breaks UNE-P conversion orders into three separate orders for

⁴¹⁹ See SWBT Aggregated Performance Data, Measurement No. 7.1, Texas, at 271-No. 7.1, 9.

⁴²⁰ WorldCom Comments at 10-11.

⁴²¹ *Id.*; see also WorldCom January 3, 2001 *Ex Parte* Letter at 10.

⁴²² See SWBT Noland Reply Aff. at para. 35.

⁴²³ SWBT Ham Aff. at para. 49.

⁴²⁴ *SWBT Texas Order*, 15 FCC Rcd at 18411-12, para. 120.

⁴²⁵ SWBT Ham Aff. at para. 50.

processing purposes, inhibits WorldCom's ability to provide service. WorldCom first maintains that SWBT provides incorrect "C" orders (i.e., orders designed to provision the UNE and establish the billing format) to WorldCom when returning order confirmation and order completion notices.⁴²⁶ Although SWBT admits that this results in an end user being disconnected from the competing LEC, the parties determined that the problem arose in only three instances when an end user attempted to switch service from one competing LEC to another.⁴²⁷ While we agree that this issue has the potential to impact numerous competitors' end users, we note that SWBT has deployed an interim solution, is working through the change management process to resolve the issue permanently and, since the problem affected so few end users, we thus find it does not warrant a finding of checklist noncompliance.⁴²⁸ We note that, while we are encouraged by SWBT's effort, we expect its performance to continue at its current level. We also reject WorldCom's and McLeodUSA's complaint that the three-order process results in a loss of dial tone for their end users.⁴²⁹ Working with both WorldCom and McLeodUSA, SWBT determined that both they were mistaken in their belief that the problem arose from the three-order process.⁴³⁰ For example, WorldCom confirms that, after consulting with SWBT on this issue, 85 percent of the trouble tickets were problematic for reasons unrelated to the three-order process.⁴³¹ Additionally, SWBT asserts that McLeodUSA's problem order was not attributable to the three-order process but rather a clerical error.⁴³²

e. Provisioning

154. Consistent with our approach in prior section 271 orders, we examine the procedures SWBT follows when provisioning competitors' orders, its performance with respect to provisioning timeliness and its provisioning quality.⁴³³ Based on the evidence in the record,

⁴²⁶ WorldCom Comments at 12-13.

⁴²⁷ SWBT Reply at 45.

⁴²⁸ See SWBT Ham Reply Aff. at paras. 62-63. We are also not persuaded by WorldCom's contention that we should reject SWBT's application due to SWBT's failure to propose a permanent solution to this issue. See WorldCom January 3, 2001 *Ex Parte* Letter at 11.

⁴²⁹ See McLeodUSA Comments at 31-33; WorldCom Comments at 15-17.

⁴³⁰ See SWBT Noland Aff. at paras. 39-40.

⁴³¹ See WorldCom January 3, 2001 *Ex Parte* Letter at 12.

⁴³² See SWBT Noland Reply Aff. at para. 41.

⁴³³ See *Bell Atlantic New York*, 15 FCC Rcd at 4058, para. 196. For provisioning timeliness, we look to missed due dates and average installation intervals and for provisioning quality, we look to service problems experienced at the provisioning stage.

we conclude that SWBT provisions competing carriers' orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own retail customers.⁴³⁴

155. We find that SWBT demonstrates that it provides nondiscriminatory access to its provisioning processes. In the *SWBT Texas Order*, we found that SWBT's pre-ordering and ordering systems provided competing carriers with equivalent access to information on available service installation dates.⁴³⁵ SWBT assigns due dates for service orders at the LSC and transmits the orders for provisioning to the LOC in a nondiscriminatory fashion.⁴³⁶ SWBT's LSC uses the same due date selection and provisioning flows for competitor's orders as SWBT's retail service representatives use for provisioning service to SWBT's retail customers. For example, due dates for residential and simple business orders are determined by accessing SWBT's proprietary pre-ordering and ordering interface EASE, and due dates are assigned by the LSC depending on work load demand on installation forces.⁴³⁷ In the event that an order requires fieldwork, the next available date will be assigned using the same procedures regardless of whether SWBT's retail or wholesale office requests the date.⁴³⁸ Moreover, no competitor contends in this proceeding that SWBT does not allow nondiscriminatory access to its provisioning due date systems or even challenges its provisioning procedures.

(i) Resale Orders

156. We conclude that SWBT provisions orders for resale "POTS" and "specials" to competitors in substantially the same time that it provisions equivalent orders to itself.⁴³⁹ As in our previous section 271 orders, we review SWBT's performance data to determine whether it provisions resale service at parity with its analogous retail services.⁴⁴⁰ SWBT demonstrates that it misses fewer competitors' customer appointments for installing resale POTS and special services, and provisions such services within equivalent average intervals, as compared to appointments and service for its own retail customers.⁴⁴¹ Specifically, the data indicate that SWBT generally satisfied the parity standards for resale residential and most business POTS

⁴³⁴ We discuss loop provisioning below. See section V.D., *infra*.

⁴³⁵ See *SWBT Texas Order*, 15 FCC Rcd at 18453, para. 195.

⁴³⁶ See *SWBT Noland/Smith Aff.* at para. 96.

⁴³⁷ EASE is the pre-ordering and ordering interface service order negotiation system used by SWBT and available to competing carriers for resold residence and simple business orders. See *SWBT Ham Aff.* at para. 129.

⁴³⁸ See *SWBT Noland/Smith Aff.* at para. 33.

⁴³⁹ SWBT's resale "specials" include orders for DDS, DS1, DS3, voice grade private line, ISDN-BRI, ISDN-PRI, DSL and any other available resold services. See *SWBT Dysart Aff.* at Attachment F, at 77.

⁴⁴⁰ See *SWBT Texas Order*, 15 FCC Rcd at 18452, para. 194.

⁴⁴¹ See *SWBT Aggregated Performance Data*, Measurement Nos. 27-01 to 27-04, 29-01 to 29-04, 43-01 to 43-08, and 45-01 to 45-08, Kansas and Oklahoma, at 271-No. 27a, 271-No. 29-a, 271-No. 43a-b and 271-No. 45a-b.

orders from July through October 2000 in both Kansas and Oklahoma, narrowly missing the parity mark for one sub-measurement.⁴⁴² Moreover, the Texas performance data show that SWBT has generally satisfied the parity standard for these measurements as well.⁴⁴³ Considering that the disparities were minimal and that no commenter complained about SWBT's performance, we conclude that this does not warrant a finding of checklist noncompliance.

157. SWBT also demonstrates that the quality of resale installations provided to competitors' customers was the same as, or better than, similar work performed for its own retail customers. The data demonstrate that SWBT's performance generally satisfied the parity standard for each type of resale POTS and specials service in both Kansas and Oklahoma from July through October.⁴⁴⁴ We find, however, that the disparities do not appear to be competitively significant in that the numbers of orders provisioned were small or that the actual disparities were slight.⁴⁴⁵ Additionally, SWBT's performance in Texas demonstrates that it generally satisfies the parity standard.⁴⁴⁶ Considering the foregoing and that no commenter complained about these issues, we find that SWBT's performance supports a finding of checklist compliance.

⁴⁴² See SWBT Aggregated Performance Data, Measurement No. 29-04, Kansas and Oklahoma, ("Percent SWBT Caused Missed Due Dates-No Field Work-Business-POTS - Resale"), at 271-No. 29-a. In Oklahoma, the disparity was 0.01 percent in July, 0.65 percent in August, 0.43 percent in September and 1.20 percent in October. In Kansas, the disparity was 0.09 percent in July, 1.17 percent in August, 0.78 percent in September and 3.32 percent in October.

⁴⁴³ See SWBT Aggregated Performance Data, Measurement Nos. 27-01 to 27-04, 29-01 to 29-04, 43-01 to 43-08, and 45-01 to 45-08, Texas, at 271-No. 27a, 271-No. 29-a, 271-No. 43a-b and 271-No. 45a-b. SWBT's only disparities were in Measurement No. 29-02 (disparity of 0.80 percent in August and 0.42 percent in September), Measurement No. 29-03 (disparity of 0.11 percent in October) and Measurement No. 29-04 (disparity of 0.21 percent in September).

⁴⁴⁴ See SWBT Aggregate Performance Data, Measurement Nos. 35-01 to 35-08 and 46-01 to 46-08, Kansas and Oklahoma, at 271-No. 35a-b and 271-No. 46a-b.

⁴⁴⁵ While some of the dozens of sub-measurements in this area reflected disparities, none suggest a level of poor performance that warrants a finding of checklist noncompliance. For example, several performance measurements simply do not provide a meaningful indication of SWBT's performance because the volumes of orders are so low, such as SWBT Aggregate Performance Data, Measurement Nos. 35-05 and 35-06, Kansas and Oklahoma, at 271-No. 35b (in four months, competitors placed a total of 4 orders in Kansas for Measurement 35-05, and a total of 9 orders in Kansas and 4 in Oklahoma for Measurement 35-06). Other measurements have minimal disparities, such as SWBT Aggregate Performance Data, Measurement 35-08, Kansas, at 271-No. 35b (in the last three months, the disparity was 1.37 percent in August, 1.01 percent in September and 1.85 percent in October). Finally, other disparities were scattered and indicated no pattern of disparate performance, such as SWBT Aggregate Performance Data, Measurement 35-01, Kansas, at 271-No. 35a (disparity of 0.83 percent in July and 1.03 percent in October but better than parity in the other months).

⁴⁴⁶ See SWBT Aggregate Performance Data, Measurement Nos. 35-01 to 35-08 and 46-01 to 46-08, Texas, at 271-No. 35a-b and 271-No. 46a-b. SWBT did not satisfy the parity standard in Texas the last four months for Measurement 35-05, which tracks one type of installation-related trouble report (i.e. for trouble requiring dispatch for residential orders). SWBT's performance was satisfactory for all other related measurements (i.e. installation related non-dispatch residential troubles and all troubles on business orders).

(ii) UNE-P Orders

158. Based on a review of corresponding performance measurements for UNE-P service, we conclude that SWBT also provisions competing carrier orders for these network combinations in the same time as it provisions equivalent retail services and at the same level of quality (*i.e.*, with a comparably low level of troubles reported within the first ten days after installation). SWBT's performance data demonstrate that, for the last four months in both states, SWBT provisioned UNE-P orders in substantially the same time that it provisioned similar orders for itself.⁴⁴⁷ SWBT's data also indicate that, over the last four months, it provisioned UNE-P orders in substantially the same manner (*i.e.* quality) as it provisioned comparable retail orders for itself in Kansas and Oklahoma.⁴⁴⁸ While there are disparities with respect to the sub-measurements relating to UNE-P provisioning, these disparities are minimal.⁴⁴⁹ Taken as a whole, we find this performance to be acceptable. In addition, performance data from Texas demonstrate that SWBT satisfied the parity measurement.⁴⁵⁰ Since the disparity in these sub-measurements is slight and no commenter complained about this issue, we find that SWBT's performance supports a finding of checklist compliance, particularly in light of SWBT's performance in Texas.

(iii) Other Issues

159. *Number Portability and Loop Cutover Coordination.* We reject allegations made by carriers that SWBT has problems coordinating number portability with loop cutovers.⁴⁵¹ KMC, for example, maintains that, in Kansas, SWBT is either incapable or unwilling to coordinate loop cutovers in a manner that provides accurate provisioning dates and prevents end users from losing service.⁴⁵² Similarly, Sprint contends that SWBT fails to process timely LNP cancellation notices for xDSL loops, resulting in service outages for Sprint's customers.⁴⁵³ Based

⁴⁴⁷ See SWBT Aggregate Performance Data, Measurement Nos. 27 and 29, Kansas and Oklahoma, at 271-No. 27b and 271-No. 27b.

⁴⁴⁸ See SWBT Aggregated Performance Data, Measurement No. 35c, at 271-No. 35c.

⁴⁴⁹ For timeliness, see SWBT Aggregate Performance Data, Measurement No. 27-05, Kansas and Oklahoma, at 271-No. 27b (disparity of 1.05 days in July and 0.12 day in August in Kansas and disparity of 0.51 day in Oklahoma in August); Measurement No. 29-06, Oklahoma, at 271-No. 29b (disparity of 4.54 percent in July, 0.6 percent in September and 0.63 percent in October.) For quality, see Measurement No. 35-12, Oklahoma, at 271-No. 35c (disparity of 0.73 percent in July and August; 1.1 percent in September, and 0.2 percent in October).

⁴⁵⁰ See SWBT Aggregate Performance Data, Measure Nos. 27, 29, and 35, Texas, at 271-No. 27b, 271-No. 29b, and 271-No. 35c.

⁴⁵¹ KMC Comments at 4; Sprint Comments at 64.

⁴⁵² KMC Comments at 4; *see also* Department of Justice Evaluation at 33.

⁴⁵³ Sprint Comments at 64.

upon our review of the record, we do not find that these allegations reflect a systemic failure that would warrant checklist noncompliance.⁴⁵⁴

160. We also reject Sprint's contention that, in Kansas, SWBT has not demonstrated that it is providing nondiscriminatory access to ported loops.⁴⁵⁵ While Sprint maintains that SWBT has not met the benchmark with regard to premature disconnects for local number portability orders in June,⁴⁵⁶ performance information during the period pertinent to this application indicate that these problems have been addressed and no longer appear to be an issue.⁴⁵⁷ SWBT has also generally met the benchmark for the time it applies the ten-digit trigger prior to the local number portability due date. In July, the ten-digit trigger was implemented on only 73.91% of the orders.⁴⁵⁸ SWBT has, however, met the benchmark in August, September and October.⁴⁵⁹ In light of its improving performance in Kansas, we find that SWBT's performance indicates that it is providing nondiscriminatory access to ported loops. We are further encouraged that SWBT's performance in Kansas and Oklahoma on these measurements is in conformance with its performance in Texas.

f. Maintenance and Repair

161. *Functionality.* We conclude that SWBT offers maintenance and repair interfaces and systems that enable a requesting carrier to access all the same functions that are available to SWBT's retail representatives. SWBT provides competing carriers with several options for requesting maintenance and reporting troubles. Competing carriers may electronically access SWBT's maintenance and repair functions for UNE-Loop, UNE-P, and resale through the GUI Toolbar Trouble Administration interface (Toolbar) or the application-to-application Electronic Bonding Trouble Administration interface (EBTA).⁴⁶⁰ Both the EBTA and Toolbar interfaces flow directly into SWBT's back-end OSS systems and enable competing carriers to perform the same functions, in the same manner, as SWBT's retail operations.⁴⁶¹ We note that SWBT

⁴⁵⁴ See *supra* section IV.C.2.b.i (for further discussion regarding SWBT's hot cut provisioning); see also SWBT Reply at 94.

⁴⁵⁵ Sprint Comments at 64-65.

⁴⁵⁶ *Id.* at 64.

⁴⁵⁷ SWBT Reply at 94; SWBT Dysart Reply Aff. at para. 108.

⁴⁵⁸ Sprint Comments at 65.

⁴⁵⁹ SWBT Reply at 94; SWBT Dysart Aff. at para. 162.

⁴⁶⁰ SWBT Ham Aff. at para. 256; SWBT Noland/Smith Aff. at paras. 99-100.

⁴⁶¹ SWBT Ham Aff. at paras. 261, 266. The Toolbar interface enables carriers to perform the same functions as SWBT's retail operations, including: (1) issue trouble reports; (2) request and receive a mechanized loop test; (3) determine that status of an opened trouble report; (4) check history; (5) view a list of open trouble reports; and (6) view a list of trouble reports closed within the last 120 days. *Id.* at para. 258. SWBT also offers requesting carriers non-electronic access to its maintenance and repair functions through the SWBT Local Operations Center (LOC), (continued....)

supports the same maintenance and repair functions in Kansas and Oklahoma as it provides carriers in Texas and that we found these functions to be satisfactory in the *SWBT Texas Order*.⁴⁶²

Based on this showing, and because no carrier disputes SWBT's case in this respect, we find once again that SWBT provides carriers with access to necessary maintenance and repair functions.

162. *Interface Response Times, Time to Restore and Quality of Work Performed.* We conclude that SWBT's maintenance and repair systems and processes are operationally ready and treat competing carriers in a nondiscriminatory manner. In previous section 271 applications, we reviewed performance data reflecting the timeliness of the BOC's interfaces used for maintenance and repair functions, the timeliness of its repair work, and the quality of the repair work. SWBT's performance data indicates satisfactory performance in each of these areas. First, because SWBT has shown that carriers in Kansas and Oklahoma have access to the same Toolbar Trouble Administration interface as carriers in Texas, we find, as we did in the *SWBT Texas Order*, that SWBT is able to respond to competing carrier requests for maintenance and repair inquiries in substantially the same time as for itself.⁴⁶³ Second, the performance data show that SWBT repairs trouble reports for competing LECs' customers in substantially the same time as it repairs its own retail customers' troubles,⁴⁶⁴ and meets substantially the same percentage of repair commitments for troubles on competing carriers' lines as it does for comparable retail repair commitments.⁴⁶⁵ Third, the data reveal that competing carriers' customers that receive

(Continued from previous page)

which handles all competing carrier repair and maintenance requests for UNEs, resale, and interconnection. See *SWBT Noland/Smith Aff.* at paras. 18, 99; *SWBT Ham Aff.* at para. 76, 256. The LOC is staffed by nearly 400 employees and is available through a hotline number 24 hours a day, seven days a week. *SWBT Noland/Smith Aff.* at paras. 18, 20.

⁴⁶² *SWBT Texas Order*, 15 FCC Rcd at 18457, para. 201.

⁴⁶³ See *SWBT Ham Aff.* at paras. 4, 13; *SWBT Mah Reply Aff.* at para. 5; see also *SWBT Texas Order*, 15 FCC Rcd at 18459, para. 205. We note that no carrier claimed that SWBT's Toolbar interface acts differently in Kansas or Oklahoma than in Texas, or otherwise complained that this interface fails to provide timely responses.

⁴⁶⁴ See *SWBT Aggregated Performance Data*, Measurement Nos. 39 and 52, Kansas and Oklahoma, at 271-No. 39a-39c and 271-No. 52a (average time to repair reported troubles). SWBT took longer to repair one type of trouble for competing LECs' customers than for its own customers – service-affecting troubles (as opposed to service outages) that do not require dispatch (as opposed to those that require a technician's visit). See *SWBT Aggregated Performance Data*, Measurement No. 39-03, Oklahoma, at 271-No. 39a. We note that performance on related measurements has been generally satisfactory in Oklahoma. Moreover, because the volume of observations is so low (between 10 and 20 troubles reported per month), we look to SWBT's performance in Texas where, under higher volumes, SWBT has consistently satisfied the parity standard. See *SWBT Aggregated Performance Data*, Measurement No. 39, Texas, at 271-No. 39a-39c.

⁴⁶⁵ See *SWBT Aggregated Performance Data*, Measurement No. 38, Kansas and Oklahoma, at 271-No. 38a-b. SWBT missed repair commitments for competing carriers for the last four months for one sub-measurement, missing 14.06 percent in July (as opposed to 8.52 percent for itself), 11.69 percent in August (6.73 percent for itself), 12.68 percent in September (5.44 percent for itself), and 7.87 percent in October (7.52 percent for itself). See *SWBT Aggregated Performance Data*, Measurement No. 38-05, Kansas, at 271-No. 38b. This performance, in and of itself, does not appear to be a basis for a finding of checklist noncompliance in light of the fact that SWBT's (continued....)

service via resale or UNE-P generally reported the same or a lower rate of trouble reports,⁴⁶⁶ and the same rate of repeat trouble reports,⁴⁶⁷ as SWBT's retail customers. Performance data in Texas confirm our findings that SWBT is providing adequate access to functions associated with SWBT's repair and maintenance systems in Kansas and Oklahoma.⁴⁶⁸ Finally, we note that no commenter has provided evidence to suggest that SWBT's systems and processes are inadequate in this area.

g. Billing

163. We conclude that SWBT provides nondiscriminatory access to its billing functions, which is necessary to enable competing carriers to provide accurate and timely bills to their customers.⁴⁶⁹ We base our conclusion on an assessment of SWBT's billing processes and systems, and its performance data. As we have required in prior section 271 orders, SWBT must demonstrate that it provides competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that SWBT provides such information to itself, and wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.⁴⁷⁰ SWBT explains that it provides competing carriers with billing information through the Usage Extract process and carrier wholesale bills, using the same processes and systems as it uses in Texas.⁴⁷¹ The Usage Extract itemizes usage for records for

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performance, as a whole, is acceptable and when no commenter has identified this as an issue. We also are encouraged by SWBT's improved performance.

⁴⁶⁶ See SWBT Aggregated Performance Data, Measurement Nos. 37 and 54, Kansas and Oklahoma, at 271-No. 37 and 271-No. 54 (trouble report rate). SWBT's data indicate that its competitors experienced a slightly higher trouble rate for resold business service than SWBT's business customers experienced in September and October, 2000. See SWBT Aggregated Performance Data, Measurement No. 37-02, Kansas, at 271-No. 37. Because the discrepancy between these two rates was slight (0.14 percent in September and 0.21 percent in October) and because no commenter complained about this performance, this performance differential does not appear to be competitively significant.

⁴⁶⁷ See SWBT Aggregated Performance Data, Measurement No. 41, Kansas and Oklahoma, at 271-No. 41. While SWBT's performance is satisfactory in the residential and business resale categories, the percentage of repeat trouble reports experienced by its competitors' UNE-P customers has climbed recently and has been out-of-parity for the last two months. See SWBT Aggregated Performance Data, Measurement No. 41-03, Oklahoma, at 271-No. 41. We would be concerned were this trend to continue, but do not find that the two out-of-parity months, in light of the satisfactory performance on related measures and the absence of specific complaints from competitors, warrants a finding of checklist noncompliance.

⁴⁶⁸ See SWBT Aggregated Performance Data, Measurement Nos. 37, 41 and 54, Texas, at 271-No. 37, 271-No. 41 and 271-No. 54.

⁴⁶⁹ See *SWBT Texas Order* at 15 FCC Rcd at 18461, para. 210.

⁴⁷⁰ See *id.*

⁴⁷¹ See SWBT McLaughlin Aff. at para. 4; SWBT McLaughlin Reply Aff. at paras. 3-12. SWBT explains that bills for Kansas, Oklahoma and Texas are processed in the same service centers, using the same systems and overseen by the same personnel. While the systems may use different tables, containing state-specific product codes (continued....)

competing carrier customers, while carrier bills serve as a monthly invoice that incorporates charges for all of the products and services provided to a competing carrier by SWBT. Similar mechanisms are used to provide billing information to SWBT's retail operations. As we concluded in the *SWBT Texas Order*, then, SWBT provides competing carriers nondiscriminatory access to the functionality of its billing systems.

164. We find that the performance standards and measurements established by the Texas Commission, and adopted by the Kansas and Oklahoma Commissions, provide a valuable measure of SWBT's ability to provide competing carriers with usage data in substantially the same time and manner that SWBT provides such information to itself. We note that SWBT reports performance data relating to the timeliness and accuracy of its usage data on a company-wide basis, rather than a state-specific basis. Because SWBT has shown that its systems and processes used for providing billing information to competing carriers are essentially the same on a company-wide basis, and because no carrier has challenged SWBT's assertion or shown that it receives different treatment in Oklahoma or Kansas than in other SWBT states, we find that this region-wide data is relevant in this proceeding.⁴⁷² These performance data indicate that, during the period from July 2000 to October 2000, SWBT's actual commercial performance consistently satisfied the standards for usage data timeliness and accuracy.⁴⁷³

165. We also find, as we did in the *SWBT Texas Order*, that SWBT's systems provide competing carriers with wholesale bills in a manner that enables them a meaningful opportunity to compete. SWBT's performance data provide evidence regarding the timeliness of only a small fraction of carriers' bills (*i.e.*, for those carriers who choose to receive their bills via EDI).⁴⁷⁴ SWBT explains, however, that its systems are designed to provide carrier bills in a prompt manner, whether delivered electronically or by paper.⁴⁷⁵ Because no carrier has offered

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and state-specific prices, there is nothing in the record that the use of these tables would change the functionality or performance of these billing systems.

⁴⁷² *Id.* We note that Ernst & Young, in its review to determine whether certain SWBT systems are the same region-wide, did not consider SWBT's billing systems. See Ernst & Young Supplemental Report. While SWBT's showing that its billing functions are the same region-wide was sufficient to allow us to consider region-wide data in this instance, we note a similar showing may not always allow us to do so in future applications. An independent reviewer's report could prove to be critical in supporting the relevance another state's OSS, for example, if there were evidence in the record that appeared to undermine this type of assertion (such as evidence suggesting that the billing systems function differently in different states, or competing carriers' assertions that they receive different treatment in different states).

⁴⁷³ See SWBT Aggregated Performance Data, Measurement Nos. 14, 16 and 19, Kansas and Oklahoma, at 271-No. 14 and 271-No. 16/17/19.

⁴⁷⁴ SWBT Aggregated Performance Data, Measurement No. 18, Kansas and Oklahoma, at 271-No. 15, 18 (demonstrating that, for the period of July to October, 2000, SWBT has returned 100% of bills returned via EDI on-time, in both Kansas and Oklahoma).

⁴⁷⁵ See SWBT McLaughlin Aff. at para. 30 (explaining that bills are mailed or transmitted by the sixth workday associated with the bill date).

evidence undermining this showing, we conclude that SWBT has carried its burden of demonstrating that it does not discriminate against competing carriers in the provision of wholesale bills.

h. Change Management Process

166. As explained in our prior orders, competing carriers need information about, and specifications for, an incumbent's systems and interfaces in order to develop and modify their systems and procedures to access the incumbent's OSS functions.⁴⁷⁶ Thus, in order to demonstrate that it is providing nondiscriminatory access to its OSS, a BOC must first demonstrate that it "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."⁴⁷⁷ As part of this demonstration, the Commission has given substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time.⁴⁷⁸ We conclude that SWBT demonstrates it provides the documentation and support necessary to provide competing carriers nondiscriminatory access to its OSS by showing that it has an adequate change management process in its five-state region, which includes Kansas and Oklahoma. The record also reflects that SWBT has adhered to its change management process over time. Indeed, no commenter in this proceeding has complained about SWBT's change management process. All of this contributes to our finding that SWBT provides access to its OSS in a manner that allows an efficient competitor a meaningful opportunity to compete.

167. *Adequacy of SWBT's Change Management Plan.* SWBT employs a region-wide change management plan that is identical in each of its five in-region states. Accordingly, the change management process used in Kansas and Oklahoma has the same characteristics and benefits as the process used by SWBT in Texas. We are thus able to conclude, for the same reasons that we did in the *SWBT Texas Order*, that SWBT's change management plan is adequate to achieve the ends described above.⁴⁷⁹ Moreover, the SWBT change management plan

⁴⁷⁶ See e.g., *SWBT Texas Order*, 15 FCC Rcd at 18403, para. 106; *Bell Atlantic New York Order*, 15 FCC Rcd. at 3999, para. 102.

⁴⁷⁷ *SWBT Texas Order*, 15 FCC Rcd at 18403, para. 106; *Bell Atlantic New York Order*, 15 FCC Rcd. at 3999, para. 102.

⁴⁷⁸ *SWBT Texas Order*, 15 FCC Rcd at 18403, para. 106; *Bell Atlantic New York Order*, 15 FCC Rcd. at 4000, para. 102. A change management process refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and changes in, the BOC's OSS system. See *SWBT Texas Order*, 15 FCC Rcd at 18403-04, para. 107; *Bell Atlantic New York Order*, 15 FCC Rcd. at 4000, para. 103.

⁴⁷⁹ See *SWBT Texas Order* in which we concluded that SWBT's change management plan was adequate based on, *inter alia*, the "go/no go" vote process (15 FCC Rcd at 18409, para. 116), adequate documentation (15 FCC Rcd at 18411, para. 119), compliance with documented procedures (15 FCC Rcd at 18415-16, para. 127), and the testing environment (15 FCC Rcd at 18420, para. 134).

now includes an improvement that was not available during the Texas 271 proceeding. Specifically, in the *SWBT Texas Order* we noted that, although it was not currently deploying such functionality, we were encouraged by SWBT's plan to implement a process known as "versioning."⁴⁸⁰ Under versioning, SWBT continues to support an existing version of software for EDI/CORBA pre-ordering and EDI ordering interfaces even after releasing a subsequent version of the software.⁴⁸¹ We approve of SWBT's subsequent implementation and find that versioning enhances SWBT's change management plan by providing significant additional assurance that changes will not disrupt competing carriers' use of SWBT's OSS.

168. We also conclude, as we did in the *SWBT Texas Order*, that SWBT provides competing carriers access to a stable testing environment that allows carriers to certify that their OSS will interact effectively with SWBT's OSS. The record demonstrates, with even more persuasive evidence than we relied on in the Texas order, that SWBT's testing environment available to competing LECs in Kansas and Oklahoma is stable, adequately mirrors the production environment, affords competing carriers an opportunity to test representative pre-ordering and ordering transactions, and offers the extended testing periods that competing carriers need for EDI implementation and new release testing. Since the time that SWBT filed its Texas application, thirteen additional carriers have utilized SWBT's testing environment to achieve production status on SWBT's EDI ordering gateway, with eight additional competing carriers currently in the process of testing and implementing EDI. Moreover, SWBT has released three different EDI/LSR releases and two LEX releases, and nine competing carriers were able to use the testing environment to sample these releases.⁴⁸²

169. *Compliance With Its Change Management Process.* SWBT has demonstrated a pattern of compliance with its documented change management processes and procedures, providing competing carriers with change management notification and documentation in a manner sufficiently timely to allow an efficient competitor a meaningful opportunity to compete. No party disputes this contention. Indeed, there is nothing in the record to suggest that parties are dissatisfied with SWBT's performance relating to three region-wide EDI/LSR releases. SWBT has recently implemented a performance measure to track the number of "late" or supplemental notices it sends out after the deadline for release specifications. Although the measurement indicates that over half of the change announcements SWBT has sent to competing carriers have been "late," we find that these results do not suggest that SWBT is failing to follow the change process, because SWBT explains that nearly all of the instances recorded in these

⁴⁸⁰ See *SWBT Texas Order*, 15 FCC Rcd at 18406-07, para. 112.

⁴⁸¹ SWBT Ham Aff. at paras. 72-73; see also, SWBT Ham Aff., Attach. G. at 8, § 3.4, (Change Agreement) (providing that the most recent prior release will be maintained in service after a new release).

⁴⁸² SWBT Ham Aff. at para. 65.

measurements are merely supplemental information to notices that were provided in a timely manner. Therefore, we find this disparity to be competitively insignificant.⁴⁸³

170. *Training, Technical Assistance and Help Desk Support.* As we did in the *SWBT Texas Order*, we conclude that SWBT demonstrates that it provides the technical assistance and help desk support necessary to give competing carriers nondiscriminatory access to its OSS.⁴⁸⁴ The same organizations that we found performed these functions in the Texas proceeding also perform these functions for competing carriers operating in Kansas and Oklahoma.⁴⁸⁵ SWBT demonstrates that it provides efficient competitors a meaningful opportunity to compete by enabling them to understand how to implement and use all of the OSS functions available to them. Because these support organizations' personnel are the same as those used by competing carriers in Texas, and because the record does not indicate that SWBT support organizations provide inadequate or discriminatory treatment to competing carriers, we find that we can rely on these findings again in our disposition of this joint application.

3. UNE Combinations

171. In this section, we conclude that SWBT provides nondiscriminatory access to combinations of unbundled network elements.⁴⁸⁶ Based on the evidence in the record, SWBT

⁴⁸³ As SWBT explains, many of these "late" notices were letters sent to correct or update existing final requirements for new releases. See Letter from Jan Price, Associate Director-Federal Regulatory, SBC Corp., to Magalie Roman Salas, Secretary, Federal Communications Commission (Dec. 19, 2000) at 2 (SWBT Dec. 19, 2000 *Ex Parte* Letter). In October, SWBT sent four letters that were not "on time." Of the four, two were exception requests about which no competing carrier complained. We find this disparity is not competitively significant. No competing carrier claimed to have been harmed by the "late" notices (see SWBT Dec. 19, 2000 *Ex Parte* Letter at 3) and competing carriers are further protected under SWBT's change management process by their ability to version SWBT software. SWBT Dysart Aff., Attach. F at 179-180. Moreover, the fact that SWBT is sending these notifications and reporting them in its performance reports also is an indication that it is following its agreed-upon procedures.

⁴⁸⁴ *SWBT Texas Order*, 15 FCC Rcd. at 18424, para. 144.

⁴⁸⁵ SWBT Noland/Smith Aff. at para. 11. SWBT has a Local Service Center staffed with approximately 1,338 employees that provides competing LECs with a single point of contact for issues regarding ordering, billing, and collections related to interconnection facilities, resold services and UNEs. See SWBT Ham Aff. at para. 76. SWBT's LSC employees and facilities serve all five states in the SWBT region, including Texas, Kansas and Oklahoma. SWBT Noland/Smith Aff. at paras. 14-17. In addition, SWBT's Local Operations Center, with 391 employees, supports the provisioning of UNEs, interconnection with SWBT's local network, and resold services as well as any maintenance and repair functions requested by competing carriers. The LOC serves as the single point of contact for maintenance and repair and is available to competing carriers in the entire five-state SWBT region 24 hours a day, 7 days a week. SWBT Noland/Smith Aff. at para. 18, 20; SWBT Ham Aff. at para. 76.

⁴⁸⁶ In order to comply with the requirements of checklist item 2, a BOC must show that it is offering "[n]ondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) . . ." 47 U.S.C. § 271(c)(2)(B)(ii). Section 251(c)(3) requires an incumbent LEC to "provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory . . ." 47 U.S.C. § 251(c)(3). Section 251(c)(3) of the Act also requires incumbent LECs to provide unbundled network (continued...)

demonstrates that it provides access to UNEs in a manner that allows requesting carriers to combine those elements, and that SWBT provides access to preexisting combinations of network elements.⁴⁸⁷ We reject allegations that SWBT imposes unreasonable and discriminatory restrictions on certain types of combinations. We base our conclusion on evidence of actual commercial usage, and also on SWBT's legal obligation to provide such access as established in the K2A and O2A.

172. The record indicates that SWBT provides access to combinations of network elements in compliance with our UNE rules.⁴⁸⁸ The K2A and O2A provisions regarding combinations of unbundled network elements are identical to those in the T2A, which we found in the *SWBT Texas Order* to comply with our UNE rules.⁴⁸⁹ SWBT has a legal obligation, under the K2A and O2A, as well as certain other existing interconnection agreements and our rules, to provide access to preassembled combinations of network elements, including the loop-switch port platform combination (known as the UNE platform or UNE-P) and the Enhanced Extended Link (EEL), a combination of loop and transport facilities.⁴⁹⁰ The Kansas and Oklahoma

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elements in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.

⁴⁸⁷ In previous section 271 orders, the Commission has emphasized that the ability of requesting carriers to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in local telecommunications markets. *SWBT Texas Order*, 15 FCC Rcd at 18463-64, paras. 213-215; *Ameritech Michigan Order*, 12 FCC Rcd at 20718-19. Combining the incumbent's unbundled network elements with their own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices. *SWBT Texas Order*, 15 FCC Rcd 18464, at para. 215.

⁴⁸⁸ See SWBT Application at 45; Kansas Commission Comments at 19-20; Oklahoma Commission Sec. 271 Order at 167-68.

⁴⁸⁹ See SWBT Sparks Aff. at para. 109.

⁴⁹⁰ SWBT Application at 45; SWBT Sparks Aff. at paras. 108-120; Kansas 271 Agreement, Attach. 6, §§14.2 - 14.4, 14.7; Oklahoma 271 Agreement, Attach. 6, §§14.2 - 14.4, 14.7. In addition, under the terms of the Kansas and Oklahoma 271 Agreements, SWBT will combine unbundled local loops with unbundled local switch ports for competitive LECs to provide service to business customers until at least October 2002. SWBT Sparks Aff. at para. 115; Kansas 271 Agreement, Attach. 6, §§ 2.4, 14.3, 14.7; Oklahoma 271 Agreement, Attach. 6, §§ 2.4, 14.3, 14.7. After that date, in those SWBT central offices where there are four or more competitive LECs collocated and where SWBT has provided unbundled network elements, SWBT may elect not to combine unbundled network elements for a competitive LEC's business customers when the same UNEs are not already combined in that central office. See SWBT Sparks Aff. at para. 115. If SWBT makes such an election, it will provide the requesting carrier with access to a secured frame where the competitive LEC can perform its own combining of those elements. *Id.* SWBT will provide new combinations of unbundled local loop and switching not currently interconnected and functional in SWBT's network for the competitive LEC to provide service to residential customers through the full term of the K2A and O2A. *Id.* at para. 116.

Commissions likewise determined that SWBT provides access to combinations of network elements in compliance with our UNE rules.⁴⁹¹

173. The record further indicates that SWBT provides access to network elements in a manner that allows competitive carriers to combine such network elements for themselves.⁴⁹² SWBT provides a variety of methods that allow competitive carriers to combine unbundled network elements. For example, in addition to the standard physical and virtual collocation arrangements, SWBT provides alternative collocation arrangements such as shared collocation cages, common cage, and cageless collocation arrangements, all of which may be used by competing LECs to combine network elements.⁴⁹³ Where space for physical collocation is not available, SWBT also permits competing LECs to collocate their equipment in adjacent controlled environmental vaults or huts.⁴⁹⁴ As required by our rules, competitive LECs may also request technically feasible methods of combining UNEs, other than collocation, that are consistent with the provisions of the 1996 Act and other governing statutes and decisions so that such carrier may combine network elements for themselves.⁴⁹⁵ For example, SWBT will provide interested competitive LECs access to a secured frame room (or cabinet, where space constraints require) that is set aside for accomplishing the necessary connections.⁴⁹⁶

174. We reject Z-Tel's allegation that SWBT unlawfully restricts UNE-P carriers' use of UNEs to provide intraLATA toll service in Kansas and Oklahoma.⁴⁹⁷ In its reply comments, Z-Tel argues, that SWBT recently determined to preclude competitors, including Z-Tel, from utilizing UNEs to provide intraLATA toll service to end users.⁴⁹⁸ SWBT responds that Z-Tel's claim is incorrect, and that the relevant sections of the K2A and O2A are "exactly the same" as those sections in the T2A, which have been interpreted by the Texas Commission to preclude the

⁴⁹¹ See Kansas Commission Comments at 19-20; Oklahoma Commission Sec. 271 Order at 167-69.

⁴⁹² SWBT Application at 46.

⁴⁹³ SWBT Application at 46; SWBT Deere Aff. at paras. 173-87; SWBT Sparks Aff. at para. 111; Kansas 271 Agreement, Attach. 6; Oklahoma 271 Agreement, Attach. 6; *see also* section IV.D.2, *infra*, (discussing the terms and conditions for access to unbundled network elements through physical and virtual collocation arrangements).

⁴⁹⁴ SWBT Application at 47; SWBT Sparks Aff. at para. 58.

⁴⁹⁵ SWBT Application at 47; SWBT Sparks Aff. at para. 111; Kansas 271 Agreement Attach. 6, § 2.22; Oklahoma 271 Agreement Attach. 6, § 2.22.

⁴⁹⁶ SWBT Sparks Aff. at paras. 121-23. Collocation is not required in order to use this option for combining network elements. *Id.* Furthermore, when competitors order UNEs for combining at the secured frame or cabinet, SWBT is required to cross-connect those elements to the frame or cabinet at no additional charge. *See* Kansas Commission Comments at 20; Oklahoma Commission Sec. 271 Order at 169.

⁴⁹⁷ *See* Z-Tel Reply at 13-14.

⁴⁹⁸ *See id.*, Attachment B. We note that Z-Tel raises this argument for the first time in its reply comments.

use restriction of which Z-Tel complains.⁴⁹⁹ Indeed, SWBT commits to “interpret those sections of the O2A and K2A in exactly the same fashion that it was ordered to in [Texas].”⁵⁰⁰ Because we find that the O2A and K2A, by its terms, do not restrict the use of UNE-P to provide intraLATA toll service in Kansas and Oklahoma, and because we rely on SWBT’s commitment to allow competing carriers to use UNE-P to provide interLATA toll service in Oklahoma and Kansas, we reject Z-Tel’s claim. Should our reliance on SWBT’s representations in this record prove to be misplaced, we will take the appropriate enforcement action at that time.

175. We also disagree with e.spire and other commenters that assert that SWBT’s two-step EEL provisioning process intrinsically places unreasonable and discriminatory restrictions on combinations of loop and transport network elements in violation of our *UNE Remand Orders*.⁵⁰¹ In our *UNE Remand Supplemental Order*, we temporarily conditioned a carrier’s use of the EEL to provide exchange access services by requiring such use to include a significant amount of local exchange service, in addition to exchange access service, to given customers.⁵⁰² On June 2, 2000, we clarified and extended that interim measure in a *UNE Remand Supplemental Order Clarification*, establishing safe harbor guidelines for what constitutes a “significant amount of local exchange service.”⁵⁰³ In that order, we also established the procedures by which a requesting carrier may convert special access circuits to unbundled loop-transport combinations. To initiate the process, a requesting carrier must certify to the incumbent LEC that it is providing a significant amount of local exchange service over circuits currently purchased through the incumbent LEC’s access tariffs, and specify the local usage option under which the requesting carrier seeks to qualify.⁵⁰⁴ Once a requesting carrier properly certifies that it is

⁴⁹⁹ See Letter from Eduardo Rodriguez, Director-Federal Regulatory, to Magalie Salas, Secretary, Federal Communications Commission, CC Docket No. 00-217 (filed December 22, 2000) (SWBT December 22 *Ex Parte* Letter); see also Z-Tel Reply at 14, n. 32. Because Z-Tel raised this issue for the first time in its reply comments, we find it appropriate to consider SWBT’s *ex parte* response to Z-Tel’s allegation.

⁵⁰⁰ See SWBT December 22 *Ex Parte* Letter.

⁵⁰¹ E.spire Comments at 3; Focal Comments at 2; see also *SWBT Texas Order*, 15 FCC Rcd 18468-70, paras. 224-228 (discussing the Commission’s reasoning for restricting the use of EELs to provide exchange access services).

⁵⁰² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, FCC 99-370 at paras. 4-5 (rel. Nov. 24, 1999) (*UNE Remand Supplemental Order*); see *Competitive Telecommunications Association v. FCC*, 117 F.3d 1068, 1073-75 (8th Cir. 1997) and *MCI Telecommunications Corp. v. FCC*, 750 F.2d 135, 140 (D.C. Cir. 1984)). The *Supplemental Order* extended the terms of the temporary constraint imposed in the *UNE Remand Order* beyond merely the “entrance facility” portion of special access because we had originally underestimated the extent of the policy implications associated with temporarily constraining interexchange carriers only from substituting entrance facilities for incumbent LECs’ special access service. *Supplemental Order* at para. 4 & n.5 (extending temporary constraint to include combinations of unbundled loops and dedicated interoffice transport network elements).

⁵⁰³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 at paras. 1, 21-23 (rel. June 2, 2000) (*Supplemental Order Clarification*).

⁵⁰⁴ *Id.* at paras. 29-30.

providing a significant amount of local exchange service, we required that the process by which special access circuits are converted to unbundled loop-transport combinations should be “simple and accomplished without delay.”⁵⁰⁵ We specifically noted that the Access Service Request (ASR) process would likely suffice.⁵⁰⁶ In particular, we emphasized the utility of the ASR process for conversions because it does not require a special access circuit to be disconnected and re-connected simply to accomplish the billing changes necessary to implement UNE pricing.

176. E.spire argues that SWBT’s two-step process for converting access circuits to UNE pricing, which requires a requesting carrier to complete both an ASR and LSR, violates the rules set forth in the *Supplemental Order Clarification* governing EEL provisioning.⁵⁰⁷ We disagree. In our *Supplemental Order Clarification*, we established a general rule to govern the EEL provisioning process in recognition that incumbent LECs may adopt different procedures to ensure that access circuits are converted to unbundled loop-transport combinations simply and without delay. We find that our rules do not expressly prohibit the two-step process performed by SWBT. Accordingly, based on the record in this proceeding, we can not conclude that SWBT’s EEL provisioning process runs afoul of the rules set forth in our *Supplemental Order Clarification* without further evidence that such process cannot be accomplished simply, quickly and without an increased risk of disconnection. We note, however, that e.spire states in its comments that it has initiated a possible enforcement action by requesting, pursuant to Commission Rule 1.730(b),⁵⁰⁸ to begin pre-filing settlement negotiations with SWBT, claiming that SWBT has violated the Commission’s rules on EELs provisioning.⁵⁰⁹ If it is determined on a more developed record that SWBT has indeed violated our UNE rules, we will, in that instance, take the appropriate enforcement action.⁵¹⁰

C. Checklist Item 4 – Unbundled Local Loops

1. Background

177. Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that a BOC provide “[l]ocal loop transmission from the central office to the customer’s premises,

⁵⁰⁵ *Id.* at para. 30.

⁵⁰⁶ *Id.*

⁵⁰⁷ See e.spire Comments at 6; see also Focal Comments *passim*; ALTS Reply at 10.

⁵⁰⁸ 47 C.F.R. § 1.730(b).

⁵⁰⁹ See e.spire comments at 7, n. 15 (citing Letter from Steven Augustino, Counsel to e.spire, to Frank Lamancusa, Deputy Division Chief, Market Disputes Resolution Division, Federal Communications Commission (filed Nov. 3, 2000)).

⁵¹⁰ As we have found in past section 271 proceedings, the section 271 process simply could not function if we were required to resolve every interpretive dispute about the precise content of an incumbent LEC’s obligations to its competitors, including fact-intensive interpretive disputes. See *SWBT Texas Order*, 15 FCC Rcd at 18366-67, paras. 22-27.